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VOLUME IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 306

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANT,

vs.

UNITED STATES, ET AL.

No. 307

EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

vs.

UNITED STATES, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

FILED AUGUST 9, 1960
PROBABLE JURISDICTION NOTED OCTOBER 17, 1960

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APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

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[fol. 1878]

Transcript of Proceedings—February 21, 1955

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Maguire: Mr. Examiner, I have Mr. Pugh present in the court for cross examination, but there were some loose ends on Mr. Engel's testimony with respect to Exhibit 10, and I thought we could supply that data for the record.

Exam. Dishman: All right.

Mr. Maguire: Will you take the stand, Mr. Engel?

H. O. Engel having been previously sworn, was recalled for further redirect examination and testified as follows:

Redirect examination.

By Mr. Maguire:

Q. Will you turn to Page 13 of Section 1 of Exhibit 10, Mr. Engel?

A. I'm sorry, I think you mean Exhibit 11 on that.

Mr. Boe: 11, I think, is right.

The Witness: I have something on 10, but no Page 13. Page 13, Section 1 of Exhibit 11.

By Mr. Maguire:

Q. Oh, I beg your pardon. Yes, that's Section 1, Page 13 of Exhibit 11. In the first column, just before the figure "211", which is about a little bit over half way down, there is the figure "201". Can you tell us what the correct number should be?

A. The correct number should be 210.

Q. So then, the two figures preceding that should be 201 [fol. 1879] and 202, and then 210, 211, 212, is that right?

A. Yes, sir, and that 210 would match the reference to that on the middle block of Page 3 of Section 1, from Klickitat to Detroit, Michigan, for example.

Q. Yes.

A. That was just a typographical error.

Q. And then you were also going to supply the routing authority for—I mean, the distance table authority for the Rock Island distances in that same exhibit, were you not?

A. Yes, sir.

Q. And can you now supply that reference?

A. Yes, sir. The reference to the Rock Island distance table would be their Tariff No. 33300, ICC No. C-11924. That publication was used in computing the mileages shown in many cases, and we just unintentionally omitted that reference in there.

Q. And that's 33300. That's the CRI&P number?

A. That's their tariff number.

Q. Is that 33-300?

A. No. It's just 33300.

Mr. Maguire: That's all.

Mr. Rockwood: I have nothing.

Exam. Dishman: Any questions?

(No response.)

Exam. Dishman: Witness excused.

(Witness excused.)

[fol. 1880] Mr. Maguire: We now have Mr. L. R. Pugh for cross examination. His direct testimony commences on Page 161 of the transcript.

Mr. Rockwood: Mr. Examiner, just before I start in cross examining Mr. Pugh, I have here available copies of Exhibit 26.

Exam. Dishman: Exhibit 26.

Mr. Rockwood: This was offered during the cross examination of Mr. Selby.

Mr. Maguire: Mr. Rockwood, it is understood that there are certain entries made opposite the shipment on June 30, 1954, on July 30th, 1954, June 30, 1954—

Mr. Rockwood: That's right.

Mr. Maguire: —and July 30, 1954, and August 28, 1954, with the words "OE", "SP&S", "SP&S", across in parentheses.

Mr. Rockwood: Those Xs, if the Examiner please, were made by the gentleman who did the tabulation for me from the data supplied to him by Mr. Selby, and they do not re-

flect anything directly appearing on the face of those exhibits, nor do the "OE" and "SP&S" in one of the final columns in parentheses reflect directly any of the contents of those exhibits.

Incidentally, we were referring to some pen and ink notations, which do not show up as pen and ink on the photostat, but actually they are the script writing in the column headed "2nd Stop" for the shipment of May 22, 1953, above the words "Tacoma, Washington", and read "Fort [fol. 1881] Steilacoom via Tacoma". That was a pen and ink notation made by Mr. Selby, made by him when he checked the exhibit.

Mr. Maguire: I think you may have misspoken yourself. That is on May 22nd, 1953. I think you said—

Mr. Rockwood: May 22, 1953, is correct.

Mr. Maguire: We have no objection to that exhibit. I don't know if it has been offered or not.

Exam. Dishman: All right. It has been received.

L. R. Pugh having been previously sworn, was recalled for further cross examination and testified as follows:

Cross examination.

By Mr. Rockwood:

Q. Mr. Pugh, does your company, St. Maries Lumber Company, manufacture lumber from timber which it owns itself, or does it buy logs from other sources?

A. From both.

Q. What is the extent of your timber ownership?

A. Oh, about 50 per cent.

Q. Well, how many million feet do you own over there?

A. Oh, I don't remember.

Q. Do you own a billion, or do you own a half a billion, or what?

A. Probably have around 100 million.

Q. And it's all in an area in the general vicinity of St. Maries?

A. Yes, within 100 miles.

[fol. 1882] Q. And in addition to your logging on your own timber, do you buy logs from others? You log on the lands of others to supply your mill?

A. Yes.

Q. And your operation is about 50 per cent from owned timber and 50 per cent from timber owned by others?

A. Forest Service.

Q. Do you, when you log in the timber that you own, do you log clear, or do you log selectively?

A. Selectively on most of it.

Q. You have enough at the mill to make it a perpetual operation on the selective logging basis?

A. On a limited extent.

Q. What do you mean by that?

A. Depending on the market conditions.

Q. Well, perpetual operation to a limited extent. I don't quite understand it.

A. We can work at a minimum capacity for—perpetually.

Q. What annual output would that call for if you worked on a minimum capacity to last forever?

A. About 20 million a year.

Q. All right. How many million feet a year do you put through your mill?

A. Oh, 30 million last year.

Q. At that rate, what is your estimate of the life of the [fol. 1883] operation of your mill at St. Maries?

A. At the rate of 30 million a year?

Q. Yes.

A. With the timber that the Forest Service has?

Q. Well, timber of any source, from any source that you may hope to put through your mill.

A. Oh, we probably have 50 years.

Q. Are you a member of the Western Pine Association?

A. Yes.

Q. Tell us very generally and very briefly what the Western Pine Association is.

A. An association of western pine manufacturers.

Q. And does it include the major producers of pine in the western states?

A. Yes.

Q. But not all of them, by any means?

A. About 90 per cent of the production.

Q. Do you report regularly to the Western Pine Association, giving the capacity of your mill, and the percentage of various products from your mill?

A. Yes.

Mr. Rockwood: I would like to have marked for identification as Exhibit No. 27, to be used as a part of cross examination, a directory of the Western Pine Association, as of January 1, 1955.

[fol. 1884] Exam. Dishman: It may be so marked as Defendant's Exhibit 27.

(Defendant's Exhibit No. 27, Witness Pugh, was marked for identification.)

By Mr. Rockwood:

Q. I refer you, Mr. Pugh, to Page 11 of this Exhibit 27 and at the bottom of that page, there is a reference to St. Maries Lumber Company, St. Maries, Idaho, with capacity of mill per eight hour shift, 100,000 feet; and production by species, Ponderosa pine 10 per cent, Idaho white pine 12 per cent, white fir 12 per cent, larch 35 per cent, Douglas fir 28 per cent, inland red cedar 3 per cent.

Are those the figures which you reported to the Western Pine for that material?

A. I think in the first figures we gave them, when we started the mill, that was correct.

Q. Well, they change every year, don't they? They make changes in their—

A. Sometimes.

Q. —estimates of capacity? For instance, the 1954 would be different from the 1955?

A. It could be.

Q. Are these your latest estimates?

A. I did not turn them in. I couldn't say what date these were made.

Q. Did your company turn them in?

[fol. 1885] A. Probably did.

Q. Well, does not somebody in your company in the regular course of business furnish this material to Western Pine Association?

A. Yes, sir.

Q. And so you have every reason to believe that those figures are correct as of this time, have you not?

A. They should be.

Q. As a matter of fact, in 1954, your estimates were slightly different, weren't they?

A. I don't know. I don't make them out, sir.

Q. I do not have copies for distribution of the 1954 directory, but I will show you the 1954 Western Pine directory, of which I have one copy, and for St. Maries, Idaho, for that year, your production is the same, 100,000 feet per eight hour shift; 16 per cent Ponderosa, 12 per cent Idaho white pine, 20 per cent fir—white fir, and 52 per cent larch and Douglas fir combines. That's correct, isn't it?

A. I believe that's correct.

Q. So, the fact is that these estimates are made to reflect the current positions?

A. Yes.

Q. When did the operation of your mill begin at St. Maries?

A. 1942 as the St. Maries Lumber Company.

Q. Did you buy a mill owned by someone else?

A. Yes.

[fol. 1886] Q. Did you take over an operation of a predecessor?

A. Yes.

Q. Were you interested in the operation of the predecessor?

A. No, sir.

Q. Were any of the present stockholders or owners of St. Maries interested in the predecessor?

A. No, sir.

Q. Your annual production—what is the annual production at your mill of all species at the present time?

A. It depends on the market—from 20 to 30 million.

Q. Twenty to 30 million feet a year?

A. Yes.

Q. And with variations, of course, we can apply these percentages from the Western Pine directory and determine approximately your output of the different species going to make up that 20 or 30 million?

A. Well, it changes every year considerably.

Q. For instance, last year, how much Ponderosa did you produce out at St. Maries?

A. I don't know. I haven't—I'm not familiar with the figures recently.

Q. Do you know how much white pine you produced at St. Maries last year?

A. No, I don't.

Q. Do you know how much Douglas fir?

[fol. 1887] A. No, I don't.

Q. What—if you load a carload of Ponderosa pine, how many feet board measure do you get in that car?

A. The average car, 30,000.

Q. And is that figure the same, or would it be the same for Idaho white pine?

A. Approximately.

Q. If those Western Pine figures are approximately correct and if we take your larger figure of 30 million feet output for the entire mill, then that would mean that your Ponderosa production of 10 per cent would be about 3 million a year?

A. That's right.

Q. At 30,000 feet per car, that would be 100 cars of Ponderosa?

A. It could be.

Q. And again applying that 12 per cent, being your estimate of your output of Idaho white pine, to 30 million, the larger figure, that would be 3,600,000 a year, would it not?

A. Yes.

Q. And at 30,000 per car, 30,000 FBM per car, that would be about 120 cars out of Idaho white pine?

A. Yes.

Q. What is shop lumber in your trade?

A. It's lumber that's used for making window frames and jambs, cut-up stock.

Q. Do you have customers operating sash and door fac-

[fol. 1888] tories in the middle west?

A. No, sir.

Q. You don't sell to any of them?

A. Not directly.

Q. Do you sell through wholesalers?

A. Yes, sir.

Q. They require—they use that type usually called shop lumber, do they not?

A. Yes.

Q. Now, can you make shop lumber out of any—can you get 100 per cent lumber out of a Ponderosa log?

A. No.

Q. What is the characteristics of shop lumber suitable for sash and door manufacturers different from the characteristics of the balance of the lumber that you get out of a log? Well, isn't it a fact that shop lumber has to be produced from a large tree with the knots far apart?

A. That's usually true, yes.

Q. And you can't produce shop lumber from a small tree with knots close together?

A. That's right.

Q. In the sash and door industry, which wood is more readily convertible to shop lumber? Ponderosa pine or white pine?

A. Ponderosa pine.

Q. And that is the species which is generally used in the [fol. 1889] sash and door trade?

A. Yes.

Q. Idaho white pine is very valuable, is it not?

A. We think so.

Q. And as a matter of fact, it is almost too good to use for sash and door work, isn't that true? It's too expensive?

A. It isn't the type that works into the shop lumber.

Q. I see. Idaho white pine is used to a large extent in pattern stock—

A. Yes.

Q. —by foundries?

A. And matches.

Q. And what?

A. Matches.

Q. Match stock?

A. Yes.

Q. Grocery store matches?

A. Yes.

Q. But the shop lumber that you produce is largely from your Ponderosa pine, is it not?

A. Yes, sir.

Q. Have you any figures to determine—from which you can tell us what percentage of your Ponderosa pine output, which we estimated roughly at 100 cars a year, would constitute shop lumber?

[fol. 1890] A. Oh, I haven't—it's a cumulative grade which comes around—dropping from selects, and it's in between the selects and the common, the low commons.

Q. But it would be not more than 10 per cent of your Ponderosa output, which would grade shop lumber, is that about right?

A. I think that's close enough.

Q. In that neighborhood?

A. Yes, sir.

Q. So that, of 100 cars of Ponderosa, 10 per cent would grade shop lumber. That would be 10 cars a year, is that right?

A. That would be about right.

Q. Is your lumber in the same area as readily convertible into shop lumber as is the tree in the forest farther west along the Deschutes River?

A. No.

Q. They get a larger tree over there, don't they?

A. Yes, sir.

Q. And produce a higher percentage of shop lumber than you do?

A. Yes, sir.

Q. Do you ever have a surplus of shop lumber at your mill that is in excess of that required to supply your regular customers?

A. Very rarely.

Q. Do you ever have a surplus of any pine products at your mill in excess of that which is required to supply your regular trade?

[fol. 1891] A. Occasionally.

Q. When you say occasionally, is that once a year or every year, or what?

A. There's some—always some item that drags along that's hard to sell.

Q. That's a small per cent of your output, is it not?

A. Well, of the pine? We're talking about pine now?

Q. Yes.

A. It's a large percentage of the pine output at times.

Q. That's hard to sell?

A. Well, it's difficult to sell.

Q. Well, is that a large per cent of your pine output?

A. Not a large percentage, no.

Q. When you say it's not large, are you able to give us an estimate of what you characterize as a large percentage of your pine output? Would it be 10 per cent, or 50 per cent, or 90 per cent?

A. Oh, I'd say 20 per cent.

Q. Is the hard-to-sell stuff?

A. Yes.

Q. So that, out of 100 cars of Ponderosa a year, you might have a hard time selling maybe 20 of those cars?

A. Yes.

Q. Did you ever have any trouble selling white pine?

A. Yes, we have.

[fol. 1892] Q. Is that about the same?

A. A smaller percentage.

Q. Is it in the neighborhood of 5 or 10 per cent?

A. Maybe 10 per cent.

Q. That you characterize as hard to sell?

A. Yes.

Q. So that, out of 120 cars a year of white pine, computed as we have, you manage to have a little difficulty in selling about 12 of your cars, is that right?

A. We've got about 25 cars right now.

Q. How long has that accumulation been going on?

A. Over a year.

Q. Over a year? As much as two years?

A. Oh, no.

Q. Are you able to tell us by general geographic areas of the United States how your lumber is distributed—the lumber produced at St. Maries is distributed? How much—can you tell us this: How much goes east of Chicago and north of the Ohio River?

A. Oh, I'd say 50 per cent of it goes east of Chicago.

Q. And north of the Ohio, or is that—

A. Oh, probably 10 per cent goes south of the Ohio.

Q. And 40 per cent stays up north of the Ohio, is that about right?

A. Yes.

[fol. 1893] Q. And where does the balance of your lumber go?

A. Middle west.

Q. That goes to the states of Illinois, and what others?

A. All the middle west states, middle west, central middle west.

Q. Well, let's define them. If I name one you don't like, you tell me "No". Illinois, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska and Kansas. Is that about what you characterize as the middle west?

A. Probably would take in most of that territory with the other 50 per cent. There's some small amount though that goes to Montana, Colorado, Utah, Arizona.

Q. In Montana for sales, you are competing with the local mills in Montana along the Great Northern and Northern Pacific and Milwaukee?

A. Not necessarily; mostly in eastern Montana.

Q. But there are a good many pine mills between you and eastern Montana, are there not?

A. There are a few.

Q. Aren't there a good many along the Northern Pacific around the Bozeman area?

A. Not shipping strong pine, I don't believe. Right around Bozeman though, there wouldn't be very many mills that would ship very much around Bozeman. Around Missoula and Kalispell and Libby.

Q. I may have misspoken. Libby, Montana?

[fol. 1894] A. Libby, yes. The distance would be 500 miles east of us.

Q. Well, in Montana, the mills that there are in Montana, which are members of the Western Pine Association, appear on Pages 12 and 13 of this exhibit, do they not?

A. Yes.

Q. Well, I was certainly wrong in picking Bozeman, but there are several around Missoula, are there not?

A. Yes, that's very near of us, within 200 miles of our place.

Q. A competitor of yours for eastern Montana?

A. All 300 of the western pine mills are competitors, friendly competitors.

Q. How do you ship to Montana destinations? By rail or by truck?

A. By rail.

Q. Using the Milwaukee?

A. Yes.

Q. Out of St. Maries, of course, because you're served only by the Milwaukee?

A. Yes.

Q. About how many cars do you ship into Montana in a year?

A. Probably 10.

Q. But, generally, your production is divided rather evenly between the territory east of Chicago and the territory in the midwestern states that I enumerated, with some scattering sales to other areas?

[fol. 1895] A. Texas, Oklahoma, a few scattered sales.

Q. Yes, but generally it's split about 50-50 between east of Chicago and the upper midwest?

A. As a general statement, yes.

Q. Yes, these aren't precise. If you load a car of lumber at your mill at St. Maries—and I am now disregarding any questions of stop to complete loading—I'm talking about loads, loaded 100 per cent at St. Maries—do you ship east over the Milwaukee to that territory, do you not?

A. Yes.

Q. And is there any territory in which you have any substantial sales anywhere in the United States, at which you are unable to sell your output at St. Maries at single factor rates?

Mr. Maguire: Now, just to get that clear, is that lumber manufactured by them at St. Maries?

Mr. Rockwood: Yes. I prefaced the question that I wasn't talking about cars that were stopped to complete loading.

Mr. Maguire: Fine.

The Witness: There are very few points that we can't get into.

By Mr. Rockwood:

Q. Where are those that you cannot get into?

A. Oh, on the Burlington line, there are a few points down around South Dakota, Colorado, Wyoming. We have local rates that apply down there, that are quite high.

Q. But that territory is generally a territory in which you [fol. 1896] have only scattering sales, is that true, the territory along the Burlington's route?

A. We don't try to sell there because of that rate. We don't know what the possibility would be.

Q. Now, you testified that you were engaged in business also as a lumber wholesaler, as well as the operator of the mill at St. Maries. As a wholesaler, you do not handle transit cars, do you?

A. Yes.

Q. As I remember, you testified that you were substantially a hundred per cent firm dealer in lumber?

A. We deal through a hundred wholesalers, but we handle the cars—we buy the cars and sell them to the customer, the wholesaler.

Q. From your output at St. Maries, loads that start there at St. Maries, do you ever start a carload of lumber out in transit unsold, or are they all firm orders?

A. They're on firm orders.

Q. For a load which originates at some point west of St. Maries, we'll say, west of Spokane, and which is stopped to complete loading at St. Maries, what for the most part is the part that goes into that car, into a car of that type? Pine or fir, or some other species?

A. Oh, it could be lath. We manufacture lath. Very few of the mills have been manufacturing lath. It could be lath [fol. 1897] in some of the cars, pine, white fir, cedar, any item that they cannot find on the coast.

Q. And all cars that are stopped to complete loading at St. Maries are shipped as firm cars, is that right?

A. Yes, that's right.

Q. How many cars did you handle in the year 1953 or the year 1954 as a wholesaler as distinguished from a manufacturer?

A. I don't have those figures, but I'd guess the volume at 10 per cent.

Q. Ten per cent is wholesale, so that—I think we were down to a thousand cars—so that about 100 cars a year are wholesale?

A. Approximately.

Q. What were the species—what are the species in the cars that you wholesale?

A. Oh, Douglas fir would be the largest specie.

Q. What is the source of that Douglas fir that you wholesale?

A. We buy it anywhere we can in Oregon, Washington; west of St. Maries, we have rates that we can stop it over for remanufacture and storage and transit privilege.

Q. Do you engage in wholesaling only to the extent that you stop those cars at St. Maries to complete loading?

A. No, not only.

Q. Do you handle any full carloads of Douglas fir from territory west of the Cascades that do not stop at St. Maries?

[fol. 1898] A. We have handled some such.

Q. From what area do you buy cars of that type?

A. Anywhere in Oregon or Washington where they're available.

Q. Do you buy it off the Milwaukee?

A. Buy from all lines.

Q. And do you buy off the Southern Pacific?

A. Yes, sir.

Q. Buy off the Union Pacific?

A. Yes, sir.

Q. You mentioned Bingen White Salmon on your direct examination. From what points on the SP&S, other than Bingen White Salmon, do you buy?

A. We have bought at Astoria, St. Helens.

Q. Who do you buy from at Bingen White Salmon?

A. Dean.

Q. What's his business?

A. He's a wholesaler.

Q. Wholesaler with headquarters at Bingen?

A. I think so.

Q. What mill do you buy from at Astoria?

A. We've bought from wholesalers down there. I've forgotten the names of the mills, but probably from a Portland wholesaler.

Q. I take it you can't tell us the location of the mills. You are giving us the location of the wholesalers?

A. I know some of the mills, yes, but we buy most of it [fol. 1899] through the wholesalers.

Mr. Maguire: Pardon me, Mr. Rockwood. I think you made a wrong assumption there, if I may comment.

Mr. Examiner, the witness says that he bought through wholesalers who were located in Portland.

Mr. Rockwood: I probably did misunderstand him.

By Mr. Rockwood:

Q. But when you say Astoria, you mean the mills at Astoria?

A. Yes. Quite a shipment was from Astoria.

Q. How many cars have you bought from Astoria in the last year?

A. Oh, very few.

Q. How many cars have you bought from Bingen in the last year?

A. Oh, maybe 10.

Q. How many cars have you bought from St. Helens in the last year?

A. I don't know. We didn't do much at St. Helens last year.

Q. What other points on the SP&S System, including the Oregon Electric, do you go to for lumber of that type?

A. Well, we buy it through wholesale agencies who pick it up any place they can.

Q. Do you know how many cars in this past year of that type that originated on the Oregon Electric south of Portland? Do you know?

A. I don't know how many.

Q. And, of course, you can't tell us how many of those [fol. 1900] cars originated at points which were competitive with the Southern Pacific?

A. No, I don't know.

Q. On cars that you buy from Milwaukee origin points

in Washington, mills on the Milwaukee, either served solely by the Milwaukee or by some other railroad, all those cars can stop at St. Maries for transit purposes, can they not?

A. Yes, sir.

Q. And as you testified, you didn't have any difficulty with the Union Pacific. So, all cars purchased on the Union Pacific in Washington and at Union Pacific points in Oregon, you don't have any difficulty?

Mr. Maguire: Just a moment.

Mr. Rockwood: Well, I'll refer to the transcript.

Mr. Maguire: I wish you would. I think if you read the entire transcript you'll find that the witness testified that there were restrictions on Union Pacific lumber.

Mr. Rockwood: But he didn't know what they were.

Mr. Maguire: That's all right, but that's not a fair assumption to say that he testified that he didn't have any trouble.

Mr. Rockwood: I will read, Mr. Examiner—I'm not trying to persuade the witness—I'll read the passage in the transcript that I was referring to. It will take me a minute to find it.

I read now from Page 169:

[fol. 1901] Question: "What are the restrictions on the joint through rates via the Union Pacific? Do you know?"

Answer: "No, I don't. I don't believe there are any."

Question: "You don't think there are any?"

Answer: "I don't believe so."

Question: "Certainly none that bother you in marketing your lumber transited at St. Maries?"

Answer: "Not so far."

Mr. Maguire: Now, just a minute. Before you resume, I want to do a little reading too when I find the passage. I think it's only fair to read the following question appearing on Page 166 in the transcript—

Mr. Rockwood: Just a minute now till I find that. All right.

Mr. Maguire: The question reads: "And with reference to the restricted application of rates via the Union Pacific which also serves, runs its same line as the Oregon Trunk; as a matter of fact, by reason of these restrictions and the

restrictions on the Oregon Trunk routing, are you able to get into the Oregon Trunk territory consistently as a source of supply?"

Answer: "No, we are not."

Now, with that background—

Exam. Dishman: Does the witness understand the question now?

The Witness: I would like to have it restated.

Mr. Rockwood: Well, will you please find it?

[fol. 1902] Exam. Dishman: Read the question, please.

(Question read.)

Exam. Dishman: Do you want to add anything to what you said on direct?

The Witness: We do have some difficulties at points of destination on Union Pacific, but I think we cannot ship south of the Ohio River, and we're restricted between Chicago and Omaha on shipments originating on the Union Pacific. We can ship east only over the Great Lakes on Union Pacific origin points.

By Mr. Rockwood:

Q. On a firm order billed to Detroit, Michigan, is there any disadvantage in being required to ship that car by across-lake route across Lake Michigan?

A. If it was in the wintertime, you may not want to ship it that way. There's a time element. Usually it takes much longer to ship it that way.

Q. Than to get through the Chicago terminals?

A. Yes.

Q. How much additional time?

A. Depending on the weather and depending on the service across the lake.

Q. Except for that as you point out, is there any objection to using across-lake route on a firm order?

A. No objection.

Mr. Maguire: You're restricting that to a shipment to Detroit, are you?

[fol. 1903] Mr. Rockwood: Yes, that's right.

By Mr. Rockwood:

Q. Well, subject to the limitations that you've discussed about the Union Pacific route, there is a possibility of getting lumber off the Union Pacific and stopping it at St. Maries to complete loading, and then ship that east over the Milwaukee, subject to the limitations you've spoken about?

A. Yes.

Q. And subject to those same limitations, you can get into the entire Southern Pacific territory in Oregon south of Eugene via Southern Pacific, Portland, Union Pacific, Marengo, Milwaukee, St. Maries, thence east?

A. Yes.

Q. And the only cars that you have referred to, which can't stop at St. Maries, are cars from Bingen, Astoria, St. Helens that you're no longer using, and possibly, though you cannot say positively, some other points in the Willamette Valley on the Oregon Electric?

A. We're restricted on all of the Oregon Electric and SP&S points.

Q. Yes, but you don't buy from all points on those routes, do you?

A. There's a possibility of buying from all of them.

Q. That's right. All right, we'll put it this way: Except for the restriction that you speak of on the Union Pacific, [fol. 1904] you're perfectly free to draw lumber and stop at St. Maries to partly unload on all cars bought on the Milwaukee in Washington, and the Union Pacific in Washington and Oregon, and on the Southern Pacific in Oregon, and, so far as Oregon is concerned and southern Washington, you're prevented from complete loading at St. Maries only on traffic from the SP&S System, including the Oregon Electric, but excluding the Oregon Trunk, which can be reached by the Union Pacific, is that true?

A. I think so.

Q. Do you know anything about the supply of timber on the lower Columbia River area along the SP&S?

A. I've heard it's very low.

Q. Mills have been closing down there right along?

A. Yes.

Q. Do you know anything about the supply of timber in the Willamette Valley which can be reached by the Oregon Electric as compared with the total timber in the state?

A. I understand there is substantial timber in the Willamette Valley.

Q. Where?

A. In the lower—around Eugene.

Q. Which can be reached by the Southern Pacific and the Oregon Electric?

A. Oh, I don't know which railroad.

Q. You don't know?

[fol. 1905] A. They might run a line in any of it.

Q. They might?

A. Yes.

Q. I'm talking about existing lines. I don't know if the Commission would give us authority to extend our lines, but do you know personally of the relative volumes of timber in those areas that I have defined?

A. No. I don't know the future volume. I don't think it's—there's a great volume there at the present time.

Q. What do you mean "great"? Is there as much as one per cent of the total in the state in that area? Do you know?

A. No, I don't know, but there's probably 50 per cent of the total there in the state in the Willamette Valley.

Q. Fifty per cent? How far would you go in defining the Willamette Valley? Including all the territory south of Eugene?

A. I'd take all the territory from Portland to Roseburg.

Q. Well, I'll go along with you if you go that far. How many cars did you stop at St. Maries in the past year to complete loading? Can you tell us?

A. No, I don't know.

Q. As many as 20?

A. Oh, probably more than that.

Q. As many as 30?

Mr. Maguire: Just a moment. Mr. Examiner, the witness said he didn't know. Now, this business of saying as [fol. 1906] many as 20, as many as 30—

Exam. Dishman: Well, can you state any exact number or approximate number?

The Witness: I couldn't, sir. I don't know how many we stopped. Because of the restrictions, we're unable to stop very many.

By Mr. Rockwood:

Q. Because of the restrictions from the Oregon Electric and SP&S, you're unable to stop very many?

A. Yes.

Q. And with all of the Union Pacific and Southern Pacific and Milwaukee territory in Washington to draw from, you can't stop very many because of the restrictions on the SP&S? Is that your answer?

A. There's a terrific volume coming from SP&S points.

Q. A terrific volume?

A. Of lumber.

Q. Do you know how the shipments from the Milwaukee in Washington compare with the shipments from the SP&S?

A. No, I don't.

Q. Do you know whether—do you know as a fact—I'm not asking for specific quantities of the Milwaukee, but the production is more or less than the production on the SP&S, do you know?

A. No, I don't.

Q. You don't?

[fol. 1907] A. I don't.

Q. You know there's a lot of timber produced along the Milwaukee in Washington, but you don't know whether it's more or less than that which is produced on the SP&S? You don't know?

A. I would think the SP&S has the larger of the volume.

Q. You would think so, but do you know?

A. I don't know for sure, no, sir.

Q. I think that you've already stated that you volunteered the information that in the sale of your pine lumber, you're in competition with all the members of the Western Pine Association, is that correct, as well as others?

A. I don't think I stated as to any others, but we're in competition with all mills on lumber.

Q. Because there are a lot of mills, some pine mills that are not members of the Western Pine?

A. Yes.

Q. And Ponderosa pine is grown in the Inland Empire from the Canadian border all the way down into California. That's correct?

A. And Arizona and New Mexico.

Q. Have you any notion what your output is when expressed in percentage of that of the Western Pine members?

A. I haven't any idea.

Q. You'd say it would be a very, very small percentage, would you not?

[fol. 1908] A. Of 300 mills, I imagine it would be pretty small.

Q. What mills are located at St. Maries, other than St. Maries Lumber Company?

A. Just a very few small ones, very small operators.

Q. Is there an Anderson-Vance Lumber Company?

A. Yes. Not at St. Maries; they're about 50 miles south.

Q. Fernwood?

A. They're at Clarkia, I believe.

Q. They're on the Milwaukee?

A. I think so.

Q. That mill is smaller than yours?

A. Yes, sir.

Q. Is there a mill, Renewah Lumber Company—R-e-n-e-w-a-h—at St. Maries?

A. No, sir, not that I know of.

Q. There's no such mill. Is there one, Marquard & Yarber, or something like that?

A. They're near St. Maries, about 10 miles out.

Q. Is there a Heisen Creek at Santa?

A. Yes, sir.

Q. That's not far from St. Maries?

A. No, sir.

Q. Is there an M-B Lumber Company at Martindale?

A. I don't know of it.

Q. Well, now, except for those that I've enumerated, do [fol. 1909] you know of any mills on the Milwaukee east of Spokane that are served solely by the Milwaukee, other than those that I've named?

A. I don't recall any offhand.

Q. All those mills that I enumerated are substantially smaller than you are, are they not?

A. Yes, they're smaller.

Q. I don't want to belabor the point, but can you tell us with any degree of exactitude the source of the cars, we'll

say, in the past year which have been stopped at St. Maries to complete loading, how many came from west of Spokane, how many came from east of Spokane? Can you tell us that?

A. No, I can't.

Q. Can you tell us with any degree of accuracy how many came from west of the Cascade Mountains?

A. No, sir.

Q. Can you tell us any more exactly than you have where they came from?

A. No, sir.

Q. That record, I assume, is available in your office, but you have never personally examined it so that you are able to tell us where the sources are?

A. Not recently, sir.

Q. During the past year?

A. No, sir.

[fol. 1910] Q. Can you tell us for the year 1953 information such as I suggest?

A. No, sir. I could get it.

Q. Yes, I assume it's available in your office.

A. Yes, sir.

Q. But you have never compiled it?

A. No, sir, I've never.

Q. And do you know whether it's ever been compiled by anybody in the office?

A. I don't believe so.

Mr. Rockwood: That's all—oh, first, let me just ask you this, Mr. Pugh:

By Mr. Rockwood:

Q. I show you what is a copy of Page 3 of Exhibit 17 of this record, Exhibit 17 being a questionnaire, which I handed to Mr. Maguire last November. That Page 3 relates to your lumber company. Have you ever been shown a copy of that sheet by Mr. Maguire or by anybody else representing the Milwaukee?

A. This morning.

Q. That's the first time you saw it?

A. Yes.

Q. Were you ever requested by them to compile data of this nature?

A. I was not available for that.

Q. You were a long ways from home, I understand. Is [fol. 1911] that information available from the records of your company?

A. Yes, sir, I think it is.

Q. Could you compile it?

A. Yes, sir.

Q. Would you have any objection to compiling it?

A. I wouldn't, but our customers might. We would have to ask the customer if he would like to have that information.

Q. You will notice that there is no customers named.

A. Well, the wholesaler carded the car, and his customer, and the shipper too, he may not care to have that for public information.

Q. The only thing that that shows which might affect the wholesaler is the destination to which diverted. That would tell something about the wholesaler's business.

A. Or where he bought the car.

Q. The origin of the car?

A. Yes.

Mr. Maguire: Pardon me. Are you going to pursue this argument any further? If you're not, I won't object to it. If you are, I will.

Mr. Rockwood: No, I'm not. That's all I have.

Exam. Dishman: Any other questions?

Mr. Torinus: I have no questions.

Exam. Dishman: Anything more, Mr. Maguire?

Mr. Maguire: Yes, Mr. Examiner.

[fol. 1912] Redirect examination.

By Mr. Maguire:

Q. I will ask you first just to look at the last sentence appearing on the cover of Defendant's Exhibit 27 for identification. That is the last sentence in that paragraph which is in parentheses. You needn't read it aloud.

A. Yes.

Q. Have you read that, Mr. Pugh?

A. Yes, I have.

Q. Now, then, referring to the data shown on Page 11 for St. Maries Lumber Company, this 100,000 feet capacity per eight hour shift, does it have any relation to actual production?

A. Not any close relationship.

Q. Does that merely show what is estimated to be the capacity, if they're working full time for an eight hour shift a day?

A. Yes, sir.

Q. Would the shop lumber, which you manufacture, to which Mr. Rockwood was referring, be included in the column shown on Page 11 opposite the name of your company headed "Selects and Commons"? Would that be included within that general description?

A. No, sir. It would be under factory lumber.

Q. Oh, yes, that would come under factory lumber. Is there an X in the column opposite the name of your company as to the staple products handled, under the column of "Factory Lumber"?

A. Yes, sir.

Q. Now, Mr. Rockwood was asking you whether the out- [fol. 1913] put of your mill at St. Maries produced much of an excess over the requirements of your regular trade. What do you understand to mean regular trade?

A. The average order you get from day to day.

Q. Does regular trade include all persons to whom you sell? I mean, all classes of persons without regard to whether they are wholesalers or retailers, or other users?

A. I think so.

Q. Now, you were also discussing the question of the number of firm orders which were shipped out of St. Maries. In the phrase "firm orders", do you include wholesalers who purchase from you, as well as other producers?

A. Yes.

Mr. Maguire: That's all. Thank you.

Mr. Rockwood: I would like to offer in evidence as a part of the cross examination Exhibit 27.

Mr. Maguire: I have no objection to Exhibit 27 for identification being considered in connection with the line opposite St. Maries Lumber Company on Page 11. I have also no objection to the consideration of the first two columns on Pages 12 and 13, showing the names and addresses of other members of the Western Pine Association in the state of Montana, because questions were asked about that.

I do object to any part of that exhibit being as part of the evidence in this case for the reason that I don't know [fol. 1914] everything that's in here, and I certainly would not want to have Counsel given a free hunting license to search data, including numbers, species, percentage by species, as to all members of the Western Pine Association. I don't believe that falls within the scope of the cross examination, and I don't believe it should be in for that purpose.

As a matter of fact, I believe that all of the data which Counsel can legitimately use under the cross examination has been read into the record, but I don't want to be technical about that. I have no objection to Exhibit 27 for identification within the limits of the cross examination which I have already denominated.

Mr. Rockwood: Mr. Examiner, there was cross examination and some direct—there was a statement volunteered by this witness about the number of mills that were members of the Western Pine Association.

I think that it's very relevant in this case to determine—to be able to show the extent of the pine industry as included in those who are members of the Association, to be able to show what his competition is, and the available sources of pine lumber available to his customers and all others who wish to buy his product and pine of similar species from other producers.

Mr. Maguire: Well, there is testimony in the record showing there are 300 some odd members of the Western Pine Association, all of whom are pine manufacturers. That's already there, but I certainly do not think it's fair

[fol. 1915] to put in an exhibit which can show what some mills in Montana, Oregon, or Washington, which are members of the Association, what their production is by species, what their capacity is, their staple products handled, because we have no opportunity whatever to cross examine them on those figures, and I think that it is entirely unfair and is improper cross examination to allow this exhibit. It's not within the scope of the cross examination at all.

Now, as I say, I have no objection to the use of this exhibit for the purpose to which it was legitimately put during the cross examination and to those portions of that exhibit, but, as to the rest of it, that gives us a series of mute witnesses, you might say, as to the production by species, by volume, by staple products handled, and by factory products and specialties, without the opportunity to cross examine the other 299 out.

Exam. Dishman: Have you anything to say, Mr. Rockwood?

Mr. Rockwood: I think, of course, if I were to make a point of the fact that X mill in Modoc, California, had a precise output, the objection of Mr. Maguire would be well taken, but I think it is a panoramic picture of the industry with which this witness has to compete for business at St. Maries.

It's relevant and it's competent evidence, and I urge the exhibit in its entirety should be received.

Exam. Dishman: Mr. Maguire said he has no oppor-
[fol. 1916] tunity to cross examine anyone regarding the other mills.

Mr. Maguire: That's exactly it. Now, I can't cross examine as to the particular species produced there, nor as to the other staple products handled, nor the factory products, nor the specialties, and, while Mr. Rockwood may not want to pick out a mill at Modoc, California, and—I'm using the example he used—I would much rather that he pick out a single mill at Modoc, California, than to summarize all of the data shown under these 300 odd mills without an opportunity for me to cross examine any on any of the basic information used.

Exam. Dishman: Is it possible at all for you two to stipulate just what use this material is to be put?

Mr. Rockwood: Well, I think the entire exhibit is admissible, but I'll be quite willing to limit my offer to the data there shown for the states of Washington, Oregon, Idaho and Montana.

Mr. Maguire: Well, I will object to that. There were some questions asked as to the names and locations of mills in Montana. Those two columns under the state of Montana can go in so far as I am concerned, but I certainly do not wish to throw open the whole right two-thirds of this page for Counsel to use, to make whatever use he may hereafter see fit to make of it, because there is nothing upon which I can cross examine there.

Here a witness has testified to and has confirmed or denied or commented upon certain facts shown in those two [fol. 1917] columns as to the state of Montana. He has testified as to all of the items shown opposite the name of his own company, and so, therefore, I can't even limit the possibility of abuse by restricting it to a few states. I still think it would be an abuse.

Exam. Dishman: Well, I was hoping you could stipulate with some degree of particularity as to what purpose the exhibit would be put to.

Mr. Maguire: Well, I shall be glad to consider that with Counsel at any time.

Exam. Dishman: All right.

Mr. Maguire: But unless he is willing to come through with a more restrictive stipulation than this one that he just offered, I won't stipulate.

Exam. Dishman: I will reserve ruling. I suggest at the first opportunity you discuss this matter and see if you can come to some agreement.

Mr. Rockwood: Well, Mr. Examiner, Mr. Maguire and I aren't going to be able to stipulate.

Mr. Maguire: I'm very much afraid we won't because I know he wants to use this as a documentary shotgun, and I don't propose to let it in.

Exam. Dishman: Well, supposing you try, and we'll consider that later.

Are there any more questions of this witness? Anything more, Mr. Rockwood?

[fol. 1918] Mr. Rockwood: No.

Exam. Dishman: Witness excused.

(Witness excused.)

COLLOQUY BETWEEN EXAMINER AND COUNSEL

Mr. Maguire: That completes the list of witnesses we were to produce for cross examination, Mr. Examiner.

Exam. Dishman: Well, it's understood, is it not, that Witnesses Carr and Jaynes will be—

Mr. Maguire: Pardon me, Mr. Examiner. I notice that Mr. Rockwood's secretary has misspelled the name there. That's J-a-y-n-e-s.

Exam. Dishman: Well, Witnesses Carr and Jaynes will be available for cross examination at the St. Paul hearing?

Mr. Maguire: That is correct, and also there was another question too, which I think we had a little discussion about, and that was Witness Bowman in connection with Exhibit No. 23. We will produce Mr. Bowman for cross examination upon Exhibit No. 23 only, at—

Mr. Rockwood: Thank you.

Mr. Maguire: —at the St. Paul hearing.

Exam. Dishman: So then there will be only those three witnesses to be further cross examined at St. Paul?

Mr. Maguire: That is correct, Mr. Examiner.

Exam. Dishman: All right. Are you ready to proceed?

Mr. Rockwood: Yes. Before we proceed, I want to ask the Examiner one question. Is there anything further to [fol. 1919] be produced by any intervenors who have appeared in support of the Complainant?

Mr. Pease: No, sir, we have nothing further, Mr. Examiner.

Exam. Dishman: There are no other intervenors present, I see, I mean intervenors in support of Complainant.

Mr. Rockwood: Well, you say there are no other intervenors present.

Exam. Dishman: In support of the complaint.

Mr. Rockwood: Well, I take it then that all intervenors in support of the complaint have rested.

Exam. Dishman: I assume so. The Department of Agriculture is the only one that's here, and I assume that, if there were to be others, they would have been here.

Mr. Rockwood: Yes. We don't want to have them showing up at St. Paul and say, "We never rested", after our case is half in.

Mr. Maguire: Well, I can't say anything to bind any of the intervenors in this case, whether on their behalf or not.

Mr. Rockwood: I should think it's appropriate for the Examiner to rule right now that they are barred from putting in additional evidence.

Exam. Dishman: Well, this hearing at Portland at this time was set for the purpose of completing cross examination of these witnesses, and it was the understanding that intervenors would have completed their presentation at the Chicago hearing.

[fol. 1920] Mr. Rockwood: All right.

Mr. Maguire: Mr. Examiner, however, there are some intervenors who appeared at the hearing, commencing June 24th, who stated that they would announce their position later. Now, I don't know whether—I think that most of them were public bodies. However, it may be that they may never come back again, or they may wish to express their opinion on brief. I'm not sure as to that, but I assume that the Examiner does not wish to foreclose them.

Exam. Dishman: Yes, I realize that you can't say anything.

Mr. Maguire: I can't say anything about them.

Mr. Pease: I also don't suppose Mr. Rockwood is attempting to foreclose any intervenors from putting in anything in rebuttal.

Mr. Rockwood: Oh, no, not at all, of course not.

I would also like to request a statement from Counsel for the Complainant at this time as to what he will assert the record now shows with respect to conduct by the Defendants SP&S Railway Company, Oregon Electric, and Oregon Trunk, which constitutes a violation of Section 3(1) of the Act.

Mr. Maguire: I think, Mr. Examiner, that is a matter that can be argued in brief. I don't think I'm called upon

at the conclusion of a hearing and following cross examination to make any statement at this time, any more than I am entitled to ask Counsel upon what facts he bases [fol. 1921] certain conclusions taken in his pleadings. I think that's a matter for brief before the Commission, and I decline to make any statement at this time.

Mr. Rockwood: All right. Those are completely preliminary matters before we start the Defendant's case.

Shall we proceed?

Exam. Dishman: We'll take a short recess at this time.

(Short recess taken.)

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Rockwood: Mr. Examiner, Defendants call Mr. Hestmark. The direct examination of Mr. Hestmark will be conducted in behalf of the Defendants by Mr. Torinus.

Jesse C. Hestmark was sworn and testified as follows:

Direct examination.

By Mr. Torinus:

Q. Will you state your full name, Mr. Hestmark, your residence, and business connection?

A. Jesse C. Hestmark. I am the Traffic Manager for the West Coast Grain Division, Archer-Daniels-Midland Company.

Q. And your headquarters are here in Portland, Mr. Hestmark?

A. Headquarters are in Portland.

Q. Will you please tell us briefly your experience in traffic work?

A. I was with the Traffic Department of General Mills for eight years.

Q. That was in Ogden, Utah?

[fol. 1922] A. Ogden, Utah. I was with the Commodity Credit Corporation for 18 months, and I've been with Archer-Daniels-Midland now for 12 years.

Q. Can you tell us generally the business of Archer-Daniels-Midland Company and the activities of the West Coast Grain Division of Archer-Daniels-Midland Company?

A. Well, we're what you class as grain merchandisers. We buy and sell grain. We also have two large elevators where we load grain for export. That's about it.

Q. Now, those two large elevators that you mentioned, one is at Vancouver, Washington, and the other is at Tacoma, is that correct?

A. That's right.

Q. What are the capacities of those elevators?

A. The Vancouver elevator is five and a quarter million.

Q. Bushels?

A. Bushels, yes, and the Tacoma elevator about two and a half million. By the way, we do have two small elevators, one at Condon and one at Ione.

Q. Condon and Ione, Oregon?

A. Yes.

Q. And those points are served by the Union Pacific Railroad, is that right?

A. That's right.

Q. Is the Vancouver elevator now the largest one in the [fol. 1923] Pacific Northwest, Mr. Hestmark?

A. I believe it is.

Q. Now, what are your duties in your present position as Traffic Manager?

A. Well, I route all freight, check all rates. In short, that's all there is.

Q. Now, I believe I neglected to ask you: What types of grain are stored in your elevators?

A. Well, we store wheat mostly in the Tacoma elevator, and we store both wheat and barley in the Vancouver elevator. Very seldom do we have any other grains. Do you mean wheat by varieties?

Q. No. I think you've sufficiently answered the question for now. I would like to ask you a few questions about wheat.

First, where is the wheat produced, which is purchased by the West Coast Grain Division of Archer-Daniels-Midland?

A. It's produced in Oregon, Washington, Idaho, and Montana mostly.

Mr. Maguire: Mr. Torinus, could I ask you just one question?

Mr. Torinus: Surely.

Mr. Maguire: Is your examination going to be confined to the West Coast Grain Division of Archer-Daniels-Midland unless you otherwise specify, so I can keep my cross straight on it?

Mr. Torinus: I believe that's correct, Mr. Maguire. I'll try and specify otherwise if I go beyond the West Coast [fol. 1924] Grain Division.

Mr. Maguire: Thank you.

By Mr. Torinus:

Q. Where is the wheat, which is purchased by West Coast Grain Division and produced in those states you mentioned, where is that wheat sold?

A. Well, it's sold to different mills in the state. It's sold for export, and it goes into storage. There is some movement east. We have a small movement east into—wheat and grain—wheat into Minneapolis, and to California.

Q. The wheat that is purchased out here by West Coast Grain Division, if it sold east or to California, or sold locally, or exported, that's all handled through the division of Archer-Daniels-Midland, the West Coast Grain Division, by which you are employed, is that right?

A. That's right.

Q. Now, can you tell us generally—maybe I can shorten this. The wheat which you sell for export is handled through your elevators at Tacoma and Vancouver?

A. That's correct.

Q. Is the wheat which is not exported generally bought by you on track at various locations and sold without being unloaded into your storage facilities?

A. That's right.

Mr. Maguire: Just a moment. I might make the observation that this in form is one of the "leading ques- [fol. 1925] tions" of the same type that Mr. Rockwood and Mr. Torinus have objected to vociferously at the Port-

land hearing. However, I'm not objecting so long as they don't get any more leading than they are, because they are not leading questions.

Mr. Rockwood: Mr. Maguire, yet.

Mr. Torinus: It's all preliminary, Mr. Maguire. They are leading questions.

Mr. Maguire: That's all right. I'm not objecting.

Mr. Torinus: It's preliminary. When I get to a controversial subject, I'll refrain from asking them.

Mr. Maguire: Everything is controversial in this case.

By Mr. Torinus:

Q. Mr. Hestmark, is your firm—and when I use the phrase "your firm", I will be referring to the West Coast Grain Division of Archer-Daniels-Midland unless otherwise specified—does your firm buy Montana wheat for sale to purchasers in the Pacific Northwest?

A. Yes.

Q. Where is that wheat purchased?

A. Well, we buy a lot of wheat on track at Spokane, most of it, or, if we happen to buy some wheat in Montana, we would have it stopped at Spokane for inspection.

Q. And you did say that most of it—

A. Bought off track at Spokane.

Q. At Spokane?

A. Yes.

[fol. 1926] Q. Now, in your duties as Traffic Manager of the West Coast Grain Division of Archer-Daniels-Midland, do you have contact with the buyers who purchase and sell wheat for your firm?

A. That's right.

Q. State whether or not that's in the regular course of your business.

A. That's—if I haven't already given them a schedule of the rates from where the car is from, the station, they come in and consult me and want to know the rate on that to the coast, or wherever it is being delivered.

Q. This contact that you have with the buyers, does that take the form of conversations in your office, or telephone calls, or what, Mr. Hestmark?

A. Conversations.

Q. How regularly do these contacts occur?

A. It's according to how much business is being handled, maybe 10 to 20 times a day, maybe once or twice. It's according to what we're handling.

Q. Now, will you state whether or not you personally have knowledge of the prices which your firm pays for the wheat that is merchandised through the West Coast Grain Division?

A. Yes, I do.

Q. How is that knowledge acquired?

A. Well, one reason: All the contracts come over my desk.

Q. Those are written contracts?

[fol. 1927] A. With the price on them.

Q. Is all of the wheat purchased by your firm covered by written contract?

A. Yes.

Q. And each one of those contracts passes over your desk, is that right?

A. Yes.

Q. Now, will you tell us generally to what purchasers the wheat, which you buy at Spokane, is sold, and where those purchasers are located?

A. Well, we sell generally to the mills located in the terminals of the large mills at Seattle, Tacoma, Portland, also California mills at Vallejo, Los Angeles, and a firm at Oakland, California.

Q. Have you sold any wheat, Mr. Hestmark, to the Pillsbury Mill at Astoria?

A. Yes, we have sold them wheat. One other mill I neglected to mention was Pillsbury at Ogden.

Mr. Maguire: Where? I couldn't hear that.

The Witness: At Ogden. General Mills at Ogden, and some mills in Idaho.

By Mr. Torinus:

Q. Now, I think you said that generally you buy your Montana wheat on track at Spokane. Will you state whether or not Spokane is an inspection and diversion point for Montana wheat, which moves into that station,

destined for the Pacific Northwest, and moves from Mon-
[fol. 1928] tana via the Great Northern, Northern Pacific and Milwaukee Railroads? If that question is too involved, I'll reframe it.

A. It's quite involved because I didn't understand the results you wanted.

Mr. Maguire: Why don't you tell him the results and then he can answer?

The Witness: Did you say inspection p[illegible]nt? If you did, it is an inspection point for all grain on all roads coming out of Montana to the Northwest, if that was the question.

By Mr. Torinus:

Q. Well, I think that answers the question. Will you tell us, Mr. Hestmark, how the price of Montana wheat sold on track at Spokane is determined?

A. Well, that's according to the variety. You take the white variety, which is used mostly for export, is determined by the price on the north coast here. You take your protein wheat, and that is determined by the price from Minneapolis. The price of milling wheat at Minneapolis, that is.

Q. Now, is most of your Montana wheat that comes into Spokane, is that so-called protein wheat, or is it the white variety?

A. I'd say it's the protein variety, hard winter and northern spring.

Q. From whom do you buy your wheat at Spokane?

A. We buy it from merchandisers at Spokane who generally have elevators through the state of Montana.

Q. Now, these merchandisers who are at Spokane, from
[fol. 1929] whom you purchase wheat, do they have information as to the price of protein wheat at Minneapolis, which is used as a guide in arriving at that quotation?

A. I imagine all these grain merchandisers know exactly what they are when they offer any for sale.

Mr. Maguire: Just a minute, Mr. Hestmark. I think the question was whether the witness knows, Mr. Examiner, and he states he imagines. Maybe that was just a loose way of stating it.

Do you know if these people know, Mr. Hestmark?

The Witness: That they know the price of grain?

Mr. Maguire: Yes.

The Witness: They must know, or they wouldn't be in the grain business.

Mr. Maguire: Well, with that bit of logic, we have no objection to the question.

By Mr. Torinus:

Q. Does your firm have access to the quoted Minneapolis price when it makes its bid for grain sold on track, bids on wheat, protein wheat sold on track at Spokane?

A. That is—that price is arrived at by calling Minneapolis and asking the grain exchange at Minneapolis what the price is. It's established there. Anybody can get it.

Q. And does your firm regularly call Minneapolis to determine that price?

A. That's right.

[fol. 1930] Q. Now, is there any difference in the price of wheat bought on track at Spokane, depending on the railroad which carries the wheat from Montana to Spokane?

A. We make no difference what railroad it's on; never have.

Q. Has your firm ever bought Montana wheat which has been brought into Spokane over the Milwaukee Railroad?

A. Yes.

Q. And has your firm bought Montana wheat brought into Spokane by the Great Northern?

A. Yes.

Q. Have you been able to buy Montana wheat brought into Spokane by the Milwaukee at any price more than wheat brought into Spokane by any other railroad?

A. No.

Q. In your experience, do you know whether Milwaukee wheat brought into Spokane can be obtained at a price lower than wheat brought into Spokane from Montana over any other railroad?

A. I've never heard of it.

Q. Does your company, Mr. Hestmark, usually inquire as to what railroad has handled any particular car of wheat into Spokane at the time it purchases the wheat?

A. No. We generally buy the wheat at Spokane, and, after the wheat is purchased, we ask—then we inquire what railroad the wheat is on so that we can give the diversion to the carrier on whose tracks they're located.

[fol. 1931] Q. Now, is there a variation in the price of wheat purchased on track at Spokane, depending on the protein content?

A. Yes.

Q. In selling wheat to millers located in the Pacific Northwest and in the general territory which you described, does your firm encounter any more difficulty in disposing of wheat brought into Spokane by the Milwaukee than wheat originating on any other railroad?

A. No.

Q. Will you state whether or not the principal flour mills in the Pacific Northwest are located at stations which are served by more than one railroad?

A. Well, all the larger mills are in the terminals, and I believe they're served by all railroads, all carriers.

Q. When you say the terminals, you mean Spokane?

A. No. Seattle, Tacoma, Portland.

Q. Those points, of course, are served by the—those points except for Portland are served by the Milwaukee, as well as the Great Northern and Northern Pacific and Union Pacific?

Mr. Maguire: Is this another preliminary question, Mr. Torinus?

Mr. Torinus: Well, it's a leading question, but it's obvious, and, to shorten it up, I'm asking it. The answer is obvious.

Mr. Maguire: I'll give you a little more latitude than you'd give me. I won't object to that.

[fol. 1932] Mr. Torinus: Thank you, Mr. Maguire.

By Mr. Torinus:

Q. Seattle, Tacoma—

Mr. Maguire: I don't know if the witness agreed with your statement or not. I didn't get the answer to that.

Exam. Dishman: Did you answer?

The Witness: I thought I answered the last question.

Exam. Dishman: What is your answer?

The Witness: I don't know what the question was.

Mr. Maguire: The question was: The Milwaukee does serve Seattle and Tacoma, doesn't it?

The Witness: Yes.

Mr. Maguire: Just to get the record straight?

The Witness: Yes.

Mr. Maguire: I'm sorry I interrupted you.

By Mr. Torinus:

Q. How does the Milwaukee reach Portland, Mr. Hestmark?

A. In connection with the Union Pacific.

Q. Now, are there any flour mills on the Spokane, Portland and Seattle Railway Company between Spokane and Vancouver, Washington?

A. Not that I know of.

Q. Are there any flour mills on the SP&S Railway System at a local or non-competitive point, except the Pillsbury Mill at Astoria?

A. Not that I know of.

[fol. 1933] Q. Now, if joint rates and through routes should be established from origins on the Milwaukee Railroad to destinations on the SP&S and its subsidiaries for the transportation of wheat westbound from Montana via Spokane, Washington, would you change your present method of purchasing wheat in any way?

A. No.

Q. Would your firm purchase any more Milwaukee wheat, if such new joint rates and routes were established?

A. I don't think so. I don't know how.

Q. Would the price of Montana wheat brought into Spokane on the Milwaukee be affected in any way?

A. I can't see how it would be.

Q. Are such joint rates and through routes necessary or desirable in the public interest to fulfill any demand of which you are aware?

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Maguire: Just a moment. I think that calls for a conclusion of the witness for which he has not qualified as an expert, and I object to that question. I think that calls

for a sheer conclusion. The witness has testified to the facts, and the argument may be made by Counsel, instead of trying to place the argument in the mouth of the witness.

Mr. Torinus: Well, Mr. Examiner, this witness is an expert traffic witness familiar with rates and routes. He's also familiar with the merchandising operations of his firm. He's familiar with the demand for wheat in this area. I simply [fol. 1934] asked him to state his opinion. The Commission can accord to that opinion such weight as the witness' qualifications, as developed by the testimony, appear to be.

Mr. Maguire: Mr. Examiner, I would have no objection whatever if Mr. Torinus should ask the witness whether the witness' own business and operations would be affected one way or the other, but that is an entirely different proposition than calling for the witness to testify to a conclusion as to the public benefit.

Exam. Dishman: Well, the witness may answer insofar as it affects his own business.

Mr. Torinus: That isn't quite the question I asked. He does business with a lot of merchandisers.

Exam. Dishman: Well, that's the thing.

Mr. Torinus: He sells to a lot of purchasers. I'm asking him whether or not, based upon his experience, the joint rates and through routes are necessary or desirable in the public interest to fulfill any demand of which he's aware.

Mr. Maguire: Now, that is an ultimate matter for the Commission to determine upon the facts in this case.

Exam. Dishman: Well, that is true.

Mr. Maguire: Now, I think, Mr. Examiner, that, so far as his own business is concerned, he can state whether it is necessary in the conduct of his business. He's entitled to that opinion, but to state as a public matter, speaking for [fol. 1935] merchandisers who are not here, I believe that's beyond a reasonable scope.

Exam. Dishman: I think we're getting a lot of argument in here that really doesn't belong in. I think the witness has certain knowledge of this situation. As long as he testifies regarding the knowledge he has, that's all right.

So, could you answer that insofar as your knowledge of your business or any concern that you deal with?

The Witness: It will not affect our business any, as far as making any difference to our business.

By Mr. Torinus:

Q. Would such joint rates and through routes fulfill any demand of which you are aware, Mr. Hestmark?

Mr. Maguire: Now, just a moment. That is attacking the same question which the Examiner ruled adversely on.

Exam. Dishman: Well, as far as his business is concerned, within his own knowledge.

The Witness: No.

By Mr. Torinus:

Q. I don't think I asked you, Mr. Hestmark, the volume of your purchases of wheat. Let me put it this way: The volume of the purchases of the West Coast Grain Division insofar as wheat is concerned, can you give us that volume for a representative period?

A. Well, I can give you that for the period of the last three years. It averaged between 30 and 40 million bushels a year.

Q. That includes not only the wheat which is purchased [fol. 1936] and disposed of to millers, but also your export wheat?

A. That includes all the wheat that we purchased. However, it does not include the wheat we handled for storage and other purposes. We will handle between 36 million and 50 million for storage and other purposes, together with our other, bushels.

Q. Well, the total volume of wheat which you handle, either for purchase and sale, or for storage, is the latter figure that you mentioned?

A Yes.

Q. Now, Mr. Hestmark, I'd like to ask you a few questions about corn. Can you tell us approximately the number of cars of corn which has been purchased by the West Coast Grain Division of Archer-Daniels-Midland in 1954?

A. Oh, I'd say about 50 cars.

Q. Would you classify your firm as a large or a small corn dealer in this area?

A. Small.

Q. Where does your firm purchase corn?

A. Well, we generally purchase the corn through a broker here in Portland, located here in Portland, who represents eastern concerns, and they ship it out mostly out of Sioux City and Minneapolis, some out of Omaha.

Q. Now, then, the corn which you buy comes to this territory from eastern markets, is that correct?

A. Yes.

[fol. 1937] Q. And does your firm buy on the basis of a delivered price out here or on some other basis?

A. It buys delivered west coast.

Q. Does your firm purchase corn before it has located a buyer?

A. No.

Q. For such corn?

A. No.

Q. Can you describe generally your sales area?

A. Well, we sell corn in Portland, northeast Washington, southern Idaho, and southern Oregon.

Q. Do you specify by what railroad route the corn which you purchase is to move from these markets in the east into this territory?

A. We do to the extent of where the purchaser is located and what kind of a route he needs. We specify to meet that route.

Q. You specify a route, depending on the location of the purchaser, but, where there is a competitive route, where there are two or more competitive routes, either one of which can be utilized, does your firm pick out the route over which the corn is to move?

A. As a rule, we give them both routes, whichever is the most available.

Q. Do you ever specify—well, go back just a minute. When you say as a rule you give them both routes, I don't quite understand what you mean by that answer.

[fol. 1938] A. We'll say "Either way", meaning either Great Northern or Northern Pacific, whichever it is, or either Milwaukee or UP. Take a Union Pacific point in Washington, we can route it direct via the Union Pacific or we can route it Milwaukee, UP.

Q. Well, when you have that option, who determines which route it is to take?

A. The shipper.

Q. I see.

A. Because we make it optional for him.

Q. Is any of the corn which you purchase—that you have purchased in the past and has moved out here to one of the purchasers from you, has any of that moved out via the Milwaukee Railroad?

A. Yes.

Q. Now, do you sell corn at any local point on the SP&S east of Vancouver?

A. We never have—east of Vancouver, you say?

Q. Yes.

A. No.

Q. How about west of Vancouver?

A. Well, we have made sales west of Vancouver.

Q. In those instances where the Milwaukee has handled corn into this territory, on what railroad has the receiver been located?

A. Union Pacific in our case.

Q. And that's at Union Pacific points somewhere between Spokane and Vancouver, Washington?

[fol. 1939] A. Yes.

Q. Now, has the absence of joint through rates via the Milwaukee Railroad into Spokane and SP&S beyond from these eastern markets that you mentioned, has the absence of such rates in connection with the transportation of corn impeded in any way the operations of your firm in the purchase and sale of corn in this area?

A. No.

Q. Would the establishment of such joint through rates assist your firm in marketing corn?

A. I don't think so.

Q. With respect to the corn that you have sold west of Vancouver at points on the SP&S, is that a relatively heavy or a small volume?

A. Very small. It would have to be small because we only had 50 cars altogether.

Q. And in relation to your total business of 50 cars, was that large or small?

A. That's small.

Q. Now, I want to ask you some questions about barley, Mr. Hestmark. Does the West Coast Grain Division also merchandise barley which is produced in the state of Oregon?

A. Yes.

Q. Now, these questions will relate to Hannchen barley. Can you tell us, Mr. Hestmark, whether Hannchen barley [fol. 1940] is the variety of barley which is shipped eastbound transcontinentally?

A. That's right.

Q. Is other barley, aside from Hannchen barley, grown in the state of Oregon, shipped east to any extent?

A. Not east.

Mr. Pease: Just a moment, Mr. Torinus. For my edification, please, how do you spell Hannchen?

Mr. Torinus: We'll ask Mr. Hestmark to spell it.

The Witness: H-a-n-n-c-h-e-n.

Exam. Dishman: Well, how does that differ from other barley?

The Witness: It's a malting variety.

Mr. Maguire: A what?

The Witness: It's a malting variety that's used in malt.

By Mr. Torinus:

Q. I take it, Mr. Hestmark, there are a number of varieties of barley produced in the Pacific Northwest, are there?

A. That's right.

Q. Is Hannchen barley the principal malting barley produced in this area?

A. That's right.

Q. There's a demand for that barley in the east, is there?

A. Yes.

Q. Now, where is that grown?

A. It's mostly grown in the state of Oregon in the Willamette Valley and the Klamath Falls district.

[fol. 1941] Q. Is it grown to any great extent in any other locality besides those two regions in the state of Oregon that you described?

A. Not that I know of—not that I know of, and I don't believe it is.

Q. Does your firm merchandise a considerable quantity of barley?

A. Yes.

Q. Now, what railroads serve the producing area in the Willamette Valley where barley is produced?

A. The Southern Pacific and the OE in the Willamette Valley.

Q. And what railroads serve the barley produced in the area in the Klamath Falls district?

A. The Southern Pacific and the Great Northern.

Q. From whom do you purchase barley that is produced in those two districts of the state of Oregon.

A. Well, we generally purchase the barley from the elevators, the small elevators in the Willamette Valley and also in Klamath Falls that accumulate the barley down there, carloads.

Q. You buy f.o.b. loading point?

A. That's right.

Q. How is the price for which this barley is purchased; how is that determined?

A. Well, that's determined on what you can sell it for in the east, what value they've put on it, the malsters in the east at Milwaukee and Chicago.

Q. Well, does your firm make an offer then to the pur- [fol. 1942] chaser or these producers, rather, in this area after you've determined what you think you can sell it for in the east?

A. That's correct.

Q. And subsequent to that time, are the sales of barley to your firm negotiated and closed, is that right?

A. That's correct. Yes, that's correct.

Q. Now, to what destination territory is the Hannchen barley, so purchased, to what destination territory is that shipped?

A. Well, it's shipped—we sell a great deal of barley to Vancouver, Washington, to a malster there, and going east at Minneapolis, St. Paul, Chicago, Manitowoc, Milwaukee.

Q. Do you ship your eastbound barley to any destinations west of the Twin Cities?

A. No.

Q. It all goes east of the Twin Cities, is that right?
A. Yes.
Q. The barley shipped east?
A. It goes to Minneapolis, St. Paul, all east.
Q. The Twin Cities and east?
A. The Twin Cities and east.
Q. Now, what proportion of the Hannchen barley, produced in the Willamette Valley—maybe I'm getting a little ahead of my story here. Let me ask you this question first: This barley which you purchase f.o.b. loading point in the Willamette Valley and also in southern Oregon, where does that move first?
[fol. 1943] A. It moves into Portland, and it's inspected at Portland. If we have the sales and it meets the requirements, it's diverted on east through the northern routes, or it's diverted by the Southern Pacific through Ogden, Union Pacific, and that way.

Mr. Maguire: Could I interrupt with just a question for clarification? When the witness uses the term "northern routes", what railroads is he speaking of?
The Witness: Northern Pacific and Great Northern.
Mr. Maguire: Thank you.

By Mr. Torinus:

Q. Then all of the barley that you purchase in these two areas comes into Portland first by railroad for inspection, is that right?
A. That's right.
Q. And after inspection and determination of whether the barley meets the grade, then disposition is made by your firm to the purchaser, is that right?
A. That is correct.
Q. What proportion of the barley grown in the Willamette Valley moves into Portland via the Southern Pacific, and what proportion via the Oregon Electric?
A. Well, my guess would be about 15 per cent via the OE and about 85 by the Southern Pacific.
Q. And what proportion of the barley produced in the Klamath Falls district moves into Portland via the Great Northern and what proportion via the Southern Pacific?

[fol. 1944] A. About 65 via Southern Pacific and 35 via the Great Northern.

Q. I don't believe I asked you to prepare, Mr. Hestmark, any figures, or to have ready any figures representing the total barley purchased by your firm, but I'm wondering if you have any figures in mind so that you can tell the Examiner the volume of the barley merchandising that you do.

A. I don't have the figures. I cannot give those to you on the volume.

Q. Is the barley that your firm merchandises in this area, is that a substantial proportion of the total quantity of—well, let's confine it to the Hannchen barley which your firm merchandises which is produced in those two areas in Oregon, is that a substantial proportion of the entire production?

A. I'd say it's a large proportion. We're about the largest grain handlers in barley.

Q. Now, are there routes available on barley originating on the Southern Pacific and moving into Portland for inspection, so that such barley could move beyond Portland via the Union Pacific and the Milwaukee Railroad between Spokane and Marengo and the Twin Cities?

A. That's correct.

Q. There are such routes?

A. There are.

Q. Are there routes available for such barley, that is, barley produced in either the Willamette Valley or the [fol. 1945] Klamath Falls area, brought into Portland via the Southern Pacific, which would permit such barley to move to the Twin Cities out of Portland via Southern Pacific, Ogden, Union Pacific, Omaha, thence Chicago, St. Paul, Minneapolis and Omaha Railway?

A. That's right; that's correct.

Q. Now, do you know whether or not, Mr. Hestmark, there is any demand, or have you heard of any demand for this particular type of barley at Shakopee, Minnesota?

A. No, sir, I have not.

Q. Is there any other type of barley, besides Hannchen barley, produced in the areas served by the SP&S and its subsidiary lines?

A. Yes, there's several types of barley.

Q. I'm speaking now of the areas served by the SP&S and its subsidiaries.

A. Yes, there's other types of barley that are raised on the SP&S.

Q. What types of barley are they?

A. Well, there's the Atlas. There's the—this is feed barley now.

Q. Well, maybe I'd better confine the question to barley which—for which there is a demand in that part of the United States generally east of Spokane, Washington.

A. I don't quite follow your question, Mr. Torinus. You want to know—

[fol. 1946] Q. Well, let me put it this way: We've been talking about Hannchen barley, which, as I understand it, is a malting barley for which there is a demand in the east.

A. That's right.

Q. Now, is there any other barley, any other type of barley grown in the territory served by the SP&S and its subsidiaries for which there is a demand in that part of the United States east of Minnesota Transfer or in the Twin Cities area?

A. No. All the other varieties are—in fact, as far as the SP&S is concerned, the only variety that I know of that moves east is Hannchen barley that's off the SP&S.

Q. The other barley is local barley used primarily for feeding in this area?

A. And local malting.

Q. And local malting?

A. Yes.

Q. Now, is Hannchen barley sold on track at Spokane?

A. No, I've never heard of any Hannchen barley being sold on track at Spokane.

Q. Is there some barley which is sold on track at Spokane?

A. Yes.

Q. Where does that originate?

A. Well, that originates on the Camas Prairie line, and it's a variety most generally known as Hanna.

Q. Is the barley grown in the Pacific Northwest, generally

[fol. 1947] speaking, in great demand, or is there a surplus of barley in this area?

A. Well, we have a great surplus of barley this year on the Pacific Coast.

Mr. Maguire: Just let me go back. I wonder if I could have that question, to which that answer was given, read back to me.

(Question read.)

Mr. Maguire: Mr. Examiner, the answer to that question I don't believe is quite responsive to the question. The question was: Is it generally in demand, or generally in excess, and the witness said this year there was an excess. I want to suggest that the witness be instructed to answer the question. I don't think he may have understood.

Mr. Torinus: Well, I have no objection to the witness elaborating.

Mr. Maguire: I just want an answer responsive to your question is all, whether it is generally in demand or generally in excess.

Mr. Torinus: I have no objection to that.

The Witness: Mr. Maguire, now, would you repeat that question, the first part of that question to me again?

Mr. Maguire: I asked the Reporter to read it. It's Mr. Torinus' question.

Exam. Dishman: Well, is there generally a surplus?

Mr. Maguire: Mr. Torinus asked you whether there was [fol. 1948] generally a surplus or a demand for barley grown in the Northwest, and your answer was this year there is a surplus, but the question was general.

Mr. Torinus: Let me try to develop this.

Mr. Maguire: I'd like an answer to that question and then you can develop it later.

Mr. Torinus: I'll give you an opportunity to cross examine. Now, I want to develop the point in my own way, and then if you have any further objections—

Exam. Dishman: If you want to withdraw that question, all right, then start over again.

Mr. Torinus: That's what I'd like to do.

Mr. Maguire: Then the answer will be deemed stricken.

Exam. Dishman: Correct.
Mr. Torinus: That's satisfactory.

By Mr. Torinus:

Q. Mr. Hestmark, let's take Hannchen barley first. This year is there—well, let's take last year first. Last year was there a surplus of Hannchen barley?

A. Due to the rains down here in the Valley that ruined a considerable amount of Hannchen barley for malting, I don't think there was a surplus of Hannchen barley that met the malting requirements, and the same thing has happened this year to the Willamette Valley Hannchen barley.

Exam. Dishman: Well, what year do you mean by "last year"?

The Witness: Well, 1952 and '53.

[fol. 1949] Exam. Dishman: And this year?

The Witness: 1953 and 1954.

Exam. Dishman: You mean this year?

The Witness: '54. That was when the barley was harvested.

Exam. Dishman: So, that's what you mean by this year, is that right?

The Witness: That's right, yes. The last two years, it's more or less been ruined by rain.

Mr. Maguire: The last two years' crops?

The Witness: That's right.

By Mr. Torinus:

Q. Now, going back to the barley harvested prior to 1953 and 1954—we'll confine this to Hannchen barley—was there a surplus of barley harvested in this area?

A. No, I don't think so. We generally sold all the barley, malting barley, that was—all the malting barley was disposed of.

Q. Now, how about the other barley, the other varieties of barley that are grown in the Pacific Northwest, the varieties other than Hannchen barley? In the year 1954 and having relation to the barley harvested in 1954, was there or was there not a surplus?

A. You used both years there, '54 over '54. I presume you mean over '53?

Q. No. I mean by a surplus whether there's more barley on hand than meets the demand. Was there a surplus of [fol. 1950] such barley in the year of 1954?

A. Well, I would say there was considerable barley on hand in the Northwest this year, more than there has been in my 12 years in this territory. It's still on hand, in storage, in several large elevators. We have, I think, 2,200 cars in our own elevators.

Q. And that barley, which is in storage, was that harvested in 1954, all of it?

A. That's right.

Q. Prior to the year 1954, has there been a surplus of barley in this territory?

A. I would say there hasn't been a surplus.

Mr. Maguire: I couldn't hear the answer. I'm sorry.

The Witness: I say there has not been a surplus.

By Mr. Torinus:

Q. Now, does your firm buy midwestern barley?

A. We buy barley from dealers in Minneapolis, eastern barley, and ship it out this way.

Q. Do you buy on the Minneapolis market, do you?

A. Yes.

Q. What disposition do you make of that barley?

A. Well, we buy malting barley from there, and we ship it to Los Angeles, California, for malting.

Q. Is there a market for any of the midwestern barley which you purchase at any local points on the Spokane, Portland and Seattle Railway or its subsidiaries?

[fol. 1951] A. We've never had any request for any.

Q. You know of no market?

A. I know of no market.

Q. On the SP&S?

A. That's right.

Q. And its subsidiaries, as a local point on the SP&S or its subsidiaries, is that right?

A. That's right.

Q. Do you know of any malt houses or breweries at any local points on the SP&S Railway or its subsidiaries?

A. No.

Q. Does your firm buy any Montana barley?

A. Yes. We bought considerable Montana barley.

Q. Do you purchase that off track at Spokane?

A. Well, we purchase it from the grain dealers, merchandisers, in Spokane, from Montana, who are located at Spokane, and we buy it off track there too.

Q. What disposition do you make of the Montana barley that you purchase?

A. We sell most of that in export trade and route it to Vancouver, Washington.

Q. Is there any difference in the price of Montana barley purchased at Spokane, which depends upon the rail carrier that brings the barley into Spokane?

A. We make no differential in purchasing it.

[fol. 1952] Q. Have you observed any difference in the price of barley at Spokane depending upon the railroad carrier that brings the car in?

A. No.

Q. Does your firm, in purchasing barley at Spokane, inquire as to what railroad transported the barley into Spokane?

A. No.

Q. Now, would your company change its methods of purchasing and selling barley in any respect if the through routes and the joint rates, which are sought in this case, were established?

A. I don't believe so.

Mr. Torinus: You may cross examine.

Cross examination.

By Mr. Maguire:

Q. Now, let's talk about wheat for a little bit, Mr. Hestmark, first. When you resell at Spokane, do you in turn sell to any merchandisers or if they might be called brokers of wheat, or do you sell direct to the mills?

A. Oh, no. We're just as liable to sell to another broker. I've seen cars change hands seven times in one day.

Q. Now, then, let us take, for example, a car of wheat that originates on the Milwaukee Railroad in Montana and is brought into Spokane, where you buy it, or you may buy it and order it shipped into Spokane. Now, would you take one of those cars and sell it to the Pillsbury Mill at Astoria?

A. We wouldn't take it.

[fol. 1953] Q. Why not?

A. It won't work.

Q. Your answer was it would not work?

A. It will not route to Astoria.

Q. And why not?

A. We haven't got through rates and routes.

Q. So, in your sales to Pillsbury, the Pillsbury Mill at Astoria, you have to refrain from selling any wheat that originated on the Milwaukee in Montana, do you not?

A. That's right.

Q. And also that same observation would apply to any purchaser of any kind who was located upon the SP&S? You could not route it out of Spokane via SP&S to his mill or place of business, could you?

A. When it originates on the Milwaukee?

Q. Yes.

A. That's right.

Q. And you, however, being a very large operator, have enough cars at your disposal so that you can just eliminate that Milwaukee wheat from consideration so far as Pillsbury and other mills in that category are concerned, isn't that it?

A. That is correct. We have to.

Q. Surely. Have you ever made a mistake and sold a Pillsbury Mill a car that originated on the Milwaukee in Montana?

A. I can recall once having made a mistake, Mr. Maguire.

[fol. 1954] Q. If you do, what do you consider your obligation in the ordinary course of business in regard to that? Would you feel that you should protect the rate?

A. We have to protect the rate. That's our responsibility.

Q. Now, I notice that you stated that there are no flour mills on the SP&S except the Pillsbury Mill. I presume you mean local points on the SP&S. Am I right?

A. I think the question was: Is there any mills on the SP&S east of Vancouver, if I recall the question.

Q. I think that question was in there, yes, east of Vancouver. Are there any other kind of mills or plants which utilize grain east of Vancouver, feed mills, or anything of that sort?

A. Not that I know of, Mr. Maguire.

Q. Do you know that there are not any, or you just don't know one way or the other?

A. I—well, I just don't know that there is one.

Q. Now, are there feed mills located on the SP&S west of Vancouver, or any other type of plant?

A. I believe there are some feed lots down around Scappoose and St. Helens.

Q. Those are both local points on the SP&S, are they not?

A. That's right.

Q. And is grain shipped in there at various times?

A. Yes. We have sold grain to those people.

Q. How about the Willamette Valley?

[fol. 1955] A. Yes, there's lots of feed mills in the Willamette Valley. You're referring to the OE again?

Q. Yes, the Oregon Electric.

A. Oh, I'm—that—I don't know what road they're located on.

Q. But there are a number of them located throughout the Willamette Valley?

A. That's right.

Q. Now, there are sheep feeding pens at Lyle, Washington, are there not, the High Grade Food Products Corporation?

A. Well, I didn't know that.

Q. And are you familiar with a small elevator located at Goldendale, Kamholz—K-a-m-h-o-l-z—Seed at Goldendale?

A. At Goldendale?

Q. At Goldendale.

A. Yes, I knew there was an elevator at Goldendale, but I assumed it was a grain loading elevator.

Q. You don't know which one it is, whether it's receiving, loading, or what?

A. Well, we get a lot of grain from there that they load out at Goldendale.

Q. Now, let's talk about the one reason why you say you would not change your purchasing methods or marketing methods if these through rates were established, and that is that your firm does such a volume of business that you can separate out the sheep from the goats, so to speak, [fol. 1956] and cut out this Milwaukee grain, this Milwaukee originating grain, and keep from selling it or routing it into any point where you might get in trouble on it on the ground that there's no through rate, is that true? Your operation is big enough so that you have enough elasticity in your operation?

A. I think, in other words, it doesn't bother us not having routes via the—

Q. Yes.

A. Yes, that's right.

Q. That's because of the size of your operation?

A. Well, possibly.

Q. Yes. Well, now, as to corn, you have bought Milwaukee Railroad corn—when I say "Milwaukee Railroad corn", I mean corn originating on the Milwaukee Railroad—for purchasers located upon the Union Pacific—I remember you made that statement.

A. That's right.

Q. Have you ever bought any Milwaukee Railroad corn for purchasers located on any of the members of the SP&S System?

A. No, sir.

Q. Why not?

A. I don't believe the rates apply.

Q. And when you buy corn, is that already at a marketing center, that is, it's come in from the country point into a transit station?

[fol. 1957] A. Yes. I think there that it's located—

Q. You mentioned Sioux City, for example.

A. Yes. You see, we buy the corn through a broker here, and he says to ship a certain day. Now, we don't know where it's coming from. The only thing we know is where

it's going and what route we want, and, if we have corn in eastern Washington on the Union Pacific, we give them a choice of two routes.

Q. Yes.

A. That's right.

Q. And the broker, of course, on the other hand, it's his responsibility to pick the route?

A. To pick—

Q. If it is corn which is sold from storage in transit, say, at Sioux City, to pick the route which will give the largest credit for inbound movement, the 25 cents as opposed to the 19 and a half cents?

A. Give him the largest.

Q. To give him the largest?

A. That's right.

Q. So, no broker in his right senses is going to ship over the Milwaukee through Spokane, Marengo, and the Union Pacific, if his inbound credit to the transit station is lower via that route than it would be through Council Bluffs, isn't that right?

A. That's right, he isn't.

Q. Now, you say you have not sold malting barley—what [fol. 1958] there was the name of that? Hannchen Barley?

A. Yes, sir.

Q. —to any maltster. Maltster? Is that what you call it?

A. Maltster.

Q. To any maltster at Shakopee, Minnesota?

A. That's right.

Q. Do you know whether there is one there or not?

A. No, I don't know, sir.

Q. You don't know one way or the other?

A. I don't know a thing about it.

Q. Do you—is the West Coast Grain Division of Archer-Daniels-Midland on an autonomous basis so far as your policy is concerned out here? In other words, does your local Vice President, your western Vice President set his own policies?

A. Yes, sir.

Q. And in what way would the establishment of the joint

rates, which the Milwaukee is seeking here, harm your business?

A. They would not harm it.

Mr. Maguire: I think that's all. Thank you, Mr. Hestmark.

Exam. Dishman: Any more questions?

Mr. Torinus: I have some in the nature of redirect.

Redirect examination.

By Mr. Torinus:

Q. First, with respect to wheat, in purchasing wheat on track at Spokane—or do you call it "off track"? Both expressions have been used.

[fol. 1959] A. Well, I don't see as it matters which way you say it, as long as you get the wheat.

Q. I want to use the correct expression. Shall I say "off track" or "on track"?

A. Well, on track. If you have it on, it's on track. We've got it on track here and we sell it to you.

Q. All right. In purchasing wheat on track in Spokane, does your firm compete with other buyers in the Spokane market?

A. Yes, sir.

Q. By reason of your size and the volume of the business that you do, are you able to obtain wheat at a better price than other buyers?

A. I don't think so, no. We have other firms here that are just as large as we are, if not larger.

Q. Now, Mr. Maguire asked you whether or not you would sell or dispose of Montana wheat brought into Spokane via the Milwaukee to the Pillsbury Mill at Astoria, and you indicated that you would not. Are there some mills in the Pacific Northwest which, by reason of their railroad location, regularly purchase Montana wheat brought into Spokane via the Milwaukee in preference to Montana wheat brought in by other railroads?

A. Yes.

Q. And what mills are those?

A. Well, that's the mills located on the Union Pacific at Walla Walla, Pendleton, The Dalles, Waitsburg.

[fol. 1960] Q. Milton-Freewater?

A. Milton-Freewater.

Q. Is that one of those mills too?

A. Yes, one of the Union Pacific points.

Q. Those are mills located on the Union Pacific Railroad between Spokane and Portland, is that right?

A. That's right.

Q. What is the reason that those particular mills would prefer Milwaukee wheat originating in Montana?

A. Because the rate applies via the Milwaukee, Union Pacific, Southern Pacific, to California, where the Great Northern and Northern Pacific will not apply in some cases. They won't even go to Portland. There's no rates at all or no routes at all.

Q. Well, would a mill on the Union Pacific between Spokane and Portland wishing to transit Montana wheat and reship to California, would it be interested in buying wheat on the Great Northern or Northern Pacific?

A. I don't think so, not without transit to California. That's right.

Q. Now, do you know, Mr. Hestmark, whether or not California is a market for Montana wheat and for flour made from Montana wheat?

A. All I could answer that question is that statistics from the Government show that they import—

Mr. Maguire: Just a moment, Mr. Hestmark. I think, Mr. Examiner, that the Government statistics can be [fol. 1961] brought in by someone other than this witness.

Exam. Dishman: Do you know of your own knowledge? Can you answer this question of your own knowledge?

The Witness: It's my understanding it is.

Mr. Maguire: No. That's a different proposition, Mr. Examiner, his understanding. He might have heard that.

The Witness: Well, we don't—

Mr. Maguire: Of his own knowledge.

Mr. Torinus: Well, now, Mr. Examiner—

Exam. Dishman: You can go into that on cross examination.

Mr. Torinus: Of course, the information that a lot of us have that we speak of every day as being of our own knowledge is derived from Government statistics, and I—

Mr. Maguire: Let it go. I'm not going to press it.

Mr. Torinus: Do you withdraw your objection?

Mr. Maguire: Yes, I withdraw my objection.

By Mr. Torinus:

Q. You may answer, Mr. Hestmark. Do you know whether there is a demand for Montana wheat or flour made from Montana wheat in California? That was the question.

A. It is my understanding, there is. There's a great deal of demand for it.

Q. Will you state the source of your understanding that there is a demand in California?

A. Well, Government statistics show that they import more flour than they raise wheat. Now, I can't answer that [fol. 1962] as to the flour part because we're not in the flour milling business. We're in the wheat. We sell wheat down there.

Q. Now, Mr. Hestmark, this Montana wheat that we're talking about that's bought on track at Spokane, is that generally high protein wheat?

A. Yes, the biggest percentage of it.

Q. Is that sold to flour millers generally, or to feed lots?

A. It would be definitely sold to the flour mills.

Q. Some feed lot which takes care of feeding sheep in some local area, would they be interested in buying high protein Montana wheat?

A. No, I don't think so.

Mr. Maguire: You say you don't know?

The Witness: I don't think they would be.

Mr. Maguire: Well, do you know?

The Witness: No, they would not be. They would not be interested.

Mr. Maguire: Well, just a moment. Mr. Examiner, I think we're getting a little bit far afield and into the speculation because, in the first place, this gentleman never heard of the feed lot in question, and how he can at this

time bring his clairvoyance into play and tell what the owner of that feed lot would want to do is beyond me.

Now, I think that is getting very well into the realm of speculation, and I move that answer be stricken.

[fol. 1963] Exam. Dishman: On what do you base your answer, Mr. Witness?

The Witness: I base my answer on the feed wheat. It's an off-grade wheat. It's very cheap, where the protein wheat from Montana is—the demands are at a very high premium over the other, and, consequently, no feeders that we sell to ask for high protein wheat, never heard of it.

Exam. Dishman: It may be allowed to stand.

Mr. Maguire: That's all right.

By Mr. Torinus:

Q. To whom do you sell your high protein Montana wheat, Mr. Hestmark?

A. Flour mills.

Q. Do you sell any Montana high protein wheat to feed mills or persons in the feed business?

A. No.

Q. Now, with respect to corn, this corn that you purchase at midwestern markets and moves out to the Pacific Coast, do you know whether or not—let me reframe that question.

Do you know what corn—do you know on what railroad such corn originates before it moves into the markets of the Twin Cities and Sioux City, for example?

A. I have no idea. It doesn't matter to us at all.

Q. You don't inquire?

A. We don't inquire. All we're interested in is the delivery.

Q. Then I take it you have no knowledge of whether or not a substantial quantity of that corn may or may not [fol. 1964] originate on the Milwaukee and move into Sioux City or the Twin Cities, and thence move west?

A. No, I have no—I'm not interested in it.

Mr. Torinus: I have no further questions.

Recross examination.

By Mr. Maguire:

Q. Well, Mr. Hestmark, when you buy this corn, who pays the freight on it? That is, who pays the freight directly? Do you, or is it a delivered price at Portland?

A. It's at a delivered price. We supply it on a delivered price.

Q. In Portland, or wherever you want it delivered?

A. That's right. We might specify non-penalty corn if we're going in the Valley.

Q. Non-penalty corn?

A. That's right.

Q. What do you mean by non-penalty corn?

A. Corn that costs—that will not work to the Southern Pacific points, 25 and a half paid in.

Mr. Torinus: Excuse me. That's penalty corn, rather than non-penalty, isn't it? For loan purposes?

The Witness: Yes, but he asked what penalty corn was.

Mr. Torinus: I thought the question was non-penalty.

Mr. Maguire: I think we're getting along very nicely here.

Mr. Torinus: I just want to understand you as you go along, Mr. Maguire.

[fol. 1965] By Mr. Maguire:

Q. Now, do you sell corn to any feed mills on the Union Pacific Railroad, which originated on the Milwaukee Railroad and came to Marengo for transiting to California?

A. No.

Q. Why not?

A. We have no market on corn down in California via this route.

Q. Are there any rates? There aren't any rates, isn't that a fact?

A. Well, I don't know that. They generally say they want something down there, and then I get the tariff and look it up.

Q. I get you. Now, I was rather puzzled by your state-

ment here that on shipments of grain and wheat originating on the Great Northern and Northern Pacific, you cannot in some cases transit to Portland. Now, did I understand you correctly?

Mr. Torinus: No, that wasn't his answer, and I object to Mr. Maguire misstating it.

Mr. Maguire: Well, I may have misunderstood. So, I'd like to have that statement correct.

Exam. Dishman: What did you say?

The Witness: What was the question again?

By Mr. Maguire:

Q. The way my notes show, on some shipments originating on the Great Northern and Northern Pacific, that in some cases you cannot transit to Portland, and I think I must have misunderstood you.

A. You did. You can route via the Great Northern, [fol. 1966] Union Pacific, to Portland.

Q. Yes.

A. Yes, sir.

Q. And can you transit out of Portland?

A. No.

Q. To any place at all?

A. To any place at all.

Q. You can't mill at Portland and go up to Seattle, for example?

A. No, sir.

Q. On wheat coming into Portland for milling?

A. On wheat coming out on the Milwaukee, Union Pacific, to Portland, you cannot go east.

Q. Wait a minute now. We were talking about Great Northern and Northern Pacific.

A. No, sir, you cannot.

Mr. Torinus: Now, if you're speaking of Great Northern wheat—

Mr. Maguire: Just a minute. Let me pursue this.

Mr. Torinus: No; let me clear—

Mr. Maguire: I want to know just what's going on here because I think—

Exam. Dishman: We're going back and forth here. We can't keep going back and forth forever. We've had direct and cross and redirect on cross and—

Mr. Maguire: There was some new matter brought up on [fol. 1967] redirect that I hadn't heard before.

Exam. Dishman: Yes. Let's clear it up as we go along. Are you asking something for clarification?

Mr. Torinus: Yes, sir, I would like to have it clarified.

Exam. Dishman: All right.

Mr. Torinus: I want to know whether Mr. Maguire is questioning the witness about corn brought into Portland —or, rather, wheat brought into Portland which moved over the Great Northern into Spokane, thence Union Pacific into Portland, or whether he's talking about wheat that goes into Portland over some other route. I want it to be clear.

Mr. Maguire: All I'm talking about is the statement of the witness that the Great Northern and Northern Pacific cannot in some cases transit either to or through Portland. I don't know which it was.

Now, the witness says you cannot transit some of it through Portland of Great Northern and Northern Pacific wheat.

Exam. Dishman: Well, Mr. Witness, would you go ahead and explain just what you do?

The Witness: The last question I think Mr. Maguire asked was: Can you take Great Northern to Spokane, Union Pacific to Portland, and transit out? Is that not true?

By Mr. Maguire:

Q. Oh, no, because I understood you to say, and I thought I misunderstood you, that you said in some instances the Great Northern and Northern Pacific cannot transit either [fol. 1968] to or through Portland. You were talking about wheat.

Now, did I misunderstand you on that?

A. You must have. Either I misunderstood the question, or you did, because it has to be in connection with the Union Pacific before you can't go out of Portland.

Q. Surely; I think we've got that straightened out. That was partly my misunderstanding.

Now, then, it was your understanding that there was a demand for Montana high protein wheat in California on account of certain statistics issued by the United States Government, is that right?

A. That's right.

Q. And those statistics that you rely upon for California are as to import flour?

A. That's right.

Q. Do you know where that flour is made that they have to import? Do the statistics show that?

A. No, I don't think they do.

Q. Do those statistics show that that flour contains Montana high protein wheat?

A. No.

Mr. Maguire: That's all.

Mr. Torinus: I have some questions on redirect in connection with that last discussion.

Exam. Dishman: Well, just confine them to that, please.

[fol. 1969] Mr. Torinus: Well, I will.

Redirect examination.

By Mr. Torinus:

Q. Do those statistics show that flour has to be imported from the states of Oregon or Washington?

A. I've never seen it indicate that.

Mr. Maguire: Just a moment. I don't think that's in connection with any cross examination. I was asking about California on cross examination about Mr. Torinus' question on the Government statistics.

Mr. Torinus: You asked him about statistics. I'm asking him about something—

Mr. Maguire: Well, just because I mentioned the word "statistics"—

Exam. Dishman: I asked if you would confine it to that, Mr. Torinus.

Mr. Torinus: Well, Mr. Examiner, you understand that he said he looked at certain statistics which indicated that

California was a deficit state insofar as flour was concerned. Now, did those same statistics indicate whether or not Oregon and Washington were deficit states? That's my question.

Mr. Maguire: That's objected to as improper redirect.

Exam. Dishman: He didn't touch on that on direct, Mr. Torinus.

Mr. Torinus: Well, it's related to the whole general subject of whether or not flour moves from Oregon or Wash- [fol. 1970] ington into California.

Exam. Dishman: Well, it seems rather remote. You can answer it if you know.

The Witness: I did answer it.

Exam. Dishman: What was your answer?

The Witness: I don't know.

Exam. Dishman: All right.

The Witness: I answered the question though in this way, that—

Exam. Dishman: Well, if you don't know, just stop there. If you can't tell of your own knowledge, let's don't speculate.

Are there any other questions?

Mr. Torinus: Well, I don't think that he's completed his answer to that question.

Exam. Dishman: He said he didn't know.

The Witness: Well, let's have the question and I'll answer it. There's so much discussion you can't tell where you are.

Mr. Torinus: Yes.

By Mr. Torinus:

Q. From those statistics that I have been talking about, do they show whether Oregon or Washington are deficit states?

A. That was not indicated.

Mr. Maguire: I object.

Exam. Dishman: It was not indicated?

The Witness: That's right.

[fol. 1971] Mr. Torinus: All right, thank you, Mr. Hestmark. That's all.

Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: We will recess for lunch until 2:00 p.m.

(Whereupon, at 12:40 p.m., a recess was taken until 2:00 p.m., of the same day.)

[fol. 1972] AFTERNOON SESSION 2:00 p.m.

Exam. Dishman: The hearing will be resumed, gentlemen.

Mr. Rockwood: I'll call Mr. Ehlen.

GEORGE F. EHLEN was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you please state your name, residence, and business?

A. My name is George F. Ehlen.

Exam. Dishman: How do you spell that?

The Witness: E-h-l-e-n. Business address, 1101 American Bank Building, Portland, Oregon, and I am Traffic Manager of the SP&S System. That includes the Oregon Electric and the Oregon Trunk.

By Mr. Rockwood:

Q. Will you please tell us, Mr. Ehlen, what your railroad experience has been?

A. I first entered railroad service with the Northern Pacific in Minnesota in 1911.

Mr. Maguire: Pardon the interruption. We will accept Mr. Ehlen's qualifications as a traffic witness.

By Mr. Rockwood:

Q. Well, your experience has extended—

Mr. Rockwood: Let me lead him a little bit so I can shorten it up.

Mr. Maguire: Sure, you can lead him all you want to on his qualifications.

[fol. 1973] By Mr. Rockwood:

Q. You've been with the SP&S since 1920?

A. Yes, sir.

Q. And in the Traffic Department of the SP&S since 1922?

A. Since January, 1923.

Q. And how long have you been Traffic Manager?

A. I've been the Traffic Manager since January 1st, 1953.

Q. In the interval between 1923 and 1953, you were in various clerical and official capacities with the SP&S in the Traffic Department?

A. Yes, sir.

Q. What are your immediate responsibilities as Traffic Manager of the SP&S?

A. As Traffic Manager of the SP&S, I have direct supervision of the Freight Traffic and Passenger Traffic Department of the entire system.

Mr. Rockwood: Mr. Examiner, Mr. Ehlen's testimony will be relatively brief, and, at a later session of this case in St. Paul, he will give much more extensive testimony. The testimony, which I am going to ask from him today, I want it in as a foundation for some of the other witnesses who will follow. I'm quite willing that the parties cross examine immediately at the close of this direct testimony or defer, as they wish.

Mr. Maguire: Thank you.

By Mr. Rockwood:

Q. Have you prepared an exhibit, Mr. Ehlen, to illustrate the rates presently effective on lumber from points on the [fol. 1974] SP&S System to points on the Milwaukee east of Spokane, Washington?

A. The exhibit was prepared under my supervision.

Mr. Rockwood: I ask that it be marked for identification as Exhibit No. 28.

Exam. Dishman: Exhibit 28.

(Defendant's Exhibit No. 28, Witness Ehlen, was marked for identification.)

Mr. Rockwood: This is a two page exhibit consisting of a cover page and a map.

By Mr. Rockwood:

Q. This document identified as Exhibit 28 is the exhibit you referred to, is it?

A. Yes, sir.

Q. First, explain the significance of the various colors shown on this map portion of the exhibit.

A. In the lower left hand corner is the SP&S System inserted on the map. That territory outlined in yellow is the territory from which rates now apply via Spokane, thence the Milwaukee, to the territory, Milwaukee territory east of Mobridge, except from the Santiam line, which is a branch line of the Oregon Electric, operating from Albany to Dollar and Foster.

The rates from the yellow territory to the territory east of Mobridge outlined in blue, to these points indicated in blue, apply only via Spokane, thence the Milwaukee. However, the rates also apply to the entire territory of the [fol. 1975] Milwaukee as to points shaded in yellow. The rates also apply—

Q. That is, they apply via the Milwaukee at Spokane, the Milwaukee points shown in yellow?

A. Yes, sir. Now, the rates from the entire SP&S System, including the Santiam Branch, apply via Spokane, Great Northern or Northern Pacific to the Twin Cities, thence to all of the Milwaukee points shaded in yellow and red.

Q. All right. What about the green shading on this map?

A. The rates to the points shaded in green apply from Vernonia, Oregon, and this Vernonia rate holds as a maximum as far east as Skamania, Washington, and they apply to the green territory outlined between Missoula and Mobridge.

Q. Shown in green?

A. Shown in green.

Q. Now, on the rates as they apply to Mobridge and the east on the Milwaukee at the points shown in blue and yellow, these are via the Milwaukee east of Spokane. Are there any transit privileges or other privileges whereby they can be used for movement to Milwaukee connections beyond the area shown in blue and yellow?

A. The rates do not apply to Milwaukee connections via Spokane.

Q. Insofar as the rates are in existence which, as you said, apply via Spokane and either the Great Northern or Northern Pacific to Minnesota Transfer and thence Milwaukee to the Milwaukee stations shown in yellow, under [fol. 1976] those rates, is it possible to move beyond Milwaukee points to Milwaukee connections, say, east of Chicago?

A. Yes, sir. The rates apply to all connections beyond the Milwaukee.

Q. Did you explain the significance of the coloring shown in brown on this map, such as Milwaukee, Wisconsin?

A. No, I haven't, but I will, sir. To the points in brown in connection with the rates that apply via Spokane and the Milwaukee, the rates also apply under the intermediate application to Minneapolis, St. Paul, Minnesota Transfer, Fordson, which, I understand, is a point within the St. Paul switching limits, LeRoy, Minnesota, and Lyle, Minnesota.

They also apply to Wahpeton, North Dakota, which is a point served by the Great Northern and Northern Pacific, as well as the Milwaukee. They apply to Rockford, Illinois; Kelso Junction, Michigan; Council Bluffs, Iowa; Muscatine, Iowa; Milwaukee, Wisconsin; North Milwaukee, Wisconsin; Green Bay, Wisconsin; Hilbert, Wisconsin; Ripon, Wisconsin; Stiles Junction, Wisconsin; and Madison, Wisconsin.

Q. Those are all points to which the rate applies by reason of intermediate application?

A. Yes, sir.

Q. I think you've already said that the rates shown in red on the Milwaukee, the rates do not apply from the SP&S via Spokane?

[fol. 1977] A. They do not apply.

Q. Did you explain the significance of the points shown in orange, such as cluster up around Duluth and Superior, and to points south in the Dakotas?

A. Now, as to the orange points, there are no rates in connection with the Milwaukee from points on our line. Starting at the westerly end of the line, Linnton, and Edgeley, North Dakota, are two points that are served by the Northern Pacific. Edgeley is also served by the Midland Continental Railroad.

The next point is Fargo, North Dakota, which is served by the Northern Pacific and Great Northern, and Carlton, Minnesota, is served by the Great Northern and Northern Pacific. Cloquet, Minnesota, is served by the Great Northern, Northern Pacific, and the Duluth & Northeastern. Duluth, Minnesota, is served by the Great Northern; Northern Pacific; CStPM&O; DSS&A; Soo Line; Duluth, Missabe & Iron Range; Duluth, Winnipeg & Pacific.

West Duluth, Minnesota, is served by the Great Northern; Northern Pacific; Soo Line; Duluth, Winnipeg & Pacific. Superior, Wisconsin, is served by the Great Northern; Northern Pacific; Soo Line; CStPM&O; Duluth, South Shore and Atlantic. Pokegama, Wisconsin, is served by the Northern Pacific and the Duluth, Missabe & Iron Range.

There's a point called Woodruff, Wisconsin, which is at the end of a line, that evidently a portion of it has been abandoned, but we have shown that point in orange, al- [fol. 1978] though it is shown in the Open & Prepay List as a Milwaukee point. There are no rates published on lumber to that point from points on the SP&S or the Milwaukee.

Mr. Maguire: Pardon me. Just for clarification, did you say that Woodruff is on a line which has been abandoned?

The Witness: No, no. The line north of there, sir, apparently has been abandoned.

Mr. Maguire: Thank you.

The Witness: This point is also served by the Chicago and North Western Railway.

By Mr. Rockwood:

Q. The significance of all of these colorings is explained in the legend, which is the first sheet of this exhibit, as I understand.

A. Yes, they are.

Q. Have you developed from the files of the SP&S the history of the rates from SP&S points to destinations on the Milwaukee to Mobridge?

A. I have, sir.

Q. Now, you have the originals of the correspondence with you here?

A. Yes, sir.

Q. And to the extent that you quote from them, you're willing to make that correspondence available for examination by our friends across the table?

A. Yes, sir.

[fol. 1979] Q. Now, with that explanation, will you please tell us—give us the history of these rates from the SP&S points, shown in yellow, to points on the Milwaukee east of Mobridge, shown in blue and yellow on Exhibit 28.

A. The rates were first established—

Mr. Maguire: Before you get further, Mr. Ehlen.

Mr. Examiner, since the witness has said that his files are available, I wish to object in advance to a summarization of any of the letters which are in those files, but that the letters themselves will be the best evidence of their contents and of the intent of the parties.

Mr. Rockwood: Well, I think, Mr. Maguire, that's perfectly well taken, of course. We have them here. To save a little time in the process of duplicating a letter, we haven't had them duplicated, all of them.

Mr. Maguire: Well, I don't wish to be hypertechnical here. If the witness, in testifying as to the effect of any letter, can at the same time give the date of the letter—

Mr. Rockwood: Oh, yes, he will.

Mr. Maguire: —on which his statement is based.

Mr. Rockwood: He'll give reference to your Milwaukee files to the extent that they are Milwaukee correspondence.

Mr. Maguire: Yes.

Mr. Rockwood: Surely.

By Mr. Rockwood:

Q. Will you proceed, Mr. Ehlen? What I'm asking for [fol. 1980] now is the history of the rates to points east of Mobridge.

A. The rates were first established from SP&S points to the Milwaukee points east of Mobridge, December 31st, 1912. They were published to apply via SP&S, Spokane, Northern Pacific, Missoula, thence the Milwaukee. These rates, established in 1912, applied to the middle western states; briefly, Iowa, the western part of Iowa, and east.

The rates were then published to points west of that territory on April 30th, 1913, and they also applied via Spokane, Northern Pacific, Missoula, and the Milwaukee.

Rates were then established via Spokane, thence the Milwaukee, September 10th, 1913, to all of the points on the Milwaukee as outlined on the map, to the points east of Mobridge.

Q. Do you have any—can you tell us what the occasion was for the failure of publication of rates to apply from SP&S points to territory of the Milwaukee west of Mobridge?

A. Well, we—it has to do with the letters that I have here. On December 5th, 1913, Mr. W. D. Skinner, then Western Traffic Manager of the SP&S Railroad, wrote Mr. R. M. Calkins, Traffic Manager of the Milwaukee Railroad in Seattle, and stated that he had not concurred in publication of lumber rates from points on our line to points on the Milwaukee east of Mobridge, and he did not care to do so unless the Milwaukee would agree to the publication of rates to the Milwaukee territory west of [fol. 1981] Mobridge.

Q. Proceed. What came forth from that?

A. Mr. Calkins replied that—

Q. Have you got the date of that letter and the file?

A. Mr. Calkins replied in his letter of January 10th, 1914, file 3353 BM, stating that "the rates from points on the SP&S Railway were established via western junctions last April.

"The changes you note effective as of September 10th were merely revisions of the original arrangement that

was entered into by the executives in the east for routing all Great Northern and Northern Pacific and affiliated lines and connections lumber traffic to points on the Milwaukee east of Mobridge via western junctions."

He also stated that "if there is a lack of information on this subject in your office, I suggest you ask Mr. Woodworth or Mr. Kenny for the details."

Mr. Woodworth was an executive of the Northern Pacific, and Mr. Kenny an executive of the Great Northern at St. Paul, Minnesota.

Q. Go ahead. What happened after that?

Mr. Maguire: Pardon me. Do you mind if I look at these while Mr. Ehlen is testifying?

Mr. Rockwood: Are those the—

Mr. Maguire: Those are the originals.

The Witness: On January 27th, Mr. Skinner wrote again [fol. 1982] to Mr. Calkins. He says, "I have noted your letter of the 22nd instant, file 3353 BM, but what I would like, if it is available, is some record of any agreement under which business from the Spokane, Portland and Seattle Railway was included in your arrangement with the Northern Pacific and Great Northern Railways. I have so far been unable to find that there has ever been any definite authority given for including our line and connections in the routing via Spokane. Please advise further."

Mr. Maguire: What's the date of that again, Mr. Ehlen?

The Witness: The date of that is January 27th, 1914.

Having received no reply, Mr. Skinner traced Mr. Calkins on February 23rd, 1914, and again on April 21st, 1914. Finally, on April 22nd, 1914, he received a reply from Mr. Calkins stating, "Your file A 1400-573 of April 21st. Complete record of the interchange arrangement resulting in the western junction routing on lumber from all of the Hill lines is not in this office, and I am, therefore, unable to give you anything more specific than in my previous letter. Mr. Miller and Mr. Woodworth handled the matter in the east, and I beg to again suggest that you refer to them for their record of the detail."

By Mr. Rockwood:

Q. Well, now, have you some further history of what happened with respect to rates west of Mobridge?

A. I have, sir.

Q. Go ahead.

A. Insofar as the SP&S, the files indicate that the matter [fol. 1983] had been dropped until we received an application or a letter from the West Coast Lumbermen's Association, addressed to Mr. Skinner, dated January 16th, 1914. Mr. Skinner, by letter to Mr. Burroughs of the Milwaukee, asked the Milwaukee for its views.

Mr. Burroughs, by letter to Mr. Skinner of April 16th, 1914, file 3353 B, stated, "We cannot consider extending through rates to points west of Mobridge."

Q. What happened after that?

A. The SP&S did not do anything further. However, in the year 1916, the Milwaukee discovered a Fourth Section violation in the rate application to Mobridge, and, at its request, the SP&S concurred in a tariff to hold the rate to that point east of Mobridge—to a point east of Mobridge as a maximum at Mobridge.

The rates to Mobridge were published in Supplement No. 7 to Chicago, Milwaukee, St. Paul Railway Tariff GFO 11890, ICC B-3020, effective July 27th, 1916.

Q. All right. There's been a great deal of talk in this record about the Santiam Branch of the Oregon Electric. What is the road that is known as the Santiam Branch?

A. That's a branch line of the Oregon Electric operating eastward from Albany.

Q. When was that line completed?

A. The line was completed approximately April 1st, 1932.

Q. Now, you have testified that the rates—

A. Pardon me—except the branch to Foster. I think we [fol. 1984] should have the exact date that that branch was completed. The line was extended from Sweet Home to Foster, December 31st, 1943.

Q. All right. You pointed out in connection with your Exhibit No. 28 that the rates do not apply from the Santiam Branch shown in red on that exhibit to Milwaukee points east of Mobridge. Have you developed from correspond-

ence of the SP&S a history of any discussion of the extension of the rates to the Santiam Branch?

A. I have, sir.

Q. Would you please tell us what that examination showed?

A. When the branch was completed in 1932, by a letter dated February 27th of 1932, the Oregon Electric instructed Mr. Toll, Agent of the Transcontinental Freight Bureau at Chicago, to publish rates from the Santiam Branch to Milwaukee points east of Mobridge on the same basis as then applied from Oregon Electric main line points, such as Albany.

A copy of our instructions was furnished all interested lines, including the Milwaukee, and some lines that we felt were not interested. In fact, instructions of that sort usually go out to practically all western carriers.

The instructions likewise covered rates and routes in which the Great Northern and Northern Pacific participated. The Great Northern, by wire of March 9th, 1932, to Mr. Toll, expressed concurrence. The Northern Pacific wire of March 9th, 1932, to Mr. Toll, expressed concurrence. Mr. Toll's Supplement No. 3 to his Rate Advice [fol. 1985] Y-9184 eliminated the Oregon Electric, SP&S, Spokane, Milwaukee route, with the notation "Change instructed by Pacific Coast Terminal Lines."

Since the Milwaukee was the only interested Pacific Coast Terminal Line, other—

Mr. Maguire: Just a moment, Mr. Ehlen, just a moment. I think we're getting from statement of fact into speculation and characterization.

Mr. Rockwood: All right, I will ask him questions there.

By Mr. Rockwood:

Q. Was the Great Northern a Pacific Coast Terminal line?

A. Yes, sir.

Q. And you say it expressed concurrence in this change?

A. It had.

Q. Was the Northern Pacific a Pacific Coast Terminal line?

A. Yes, sir.

Q. And as you stated, it had expressed its concurrence?

A. Yes, sir.

Q. What other Pacific Coast Terminal lines were there that were interested in the rates from the Santiam Branch of the Oregon Electric to Milwaukee points east of Mobridge?

A. The Milwaukee Road was the only other road interested.

Q. All right. At the same time, was anything done with respect to rates from the Santiam Branch to Mobridge, South Dakota, as a single point?

[fol. 1986] A. Yes, sir.

Q. What was that?

A. At approximately the same time the SP&S instructed the Transcontinental Freight Bureau to publish rates—

Q. What?

A. At approximately the same time they instructed the Transcontinental Freight Bureau to publish rates east of Mobridge, the SP&S instructed the North Pacific Coast Freight Bureau at Seattle to publish rates from the Santiam Branch via Spokane and the Milwaukee to Mobridge as a single point.

Apparently there was no objection to the rate by the Milwaukee, and the rate became effective April 1st, 1932.

Q. Now, will you tell us what the history was of the rates that you have described from Vernonia, shown in green on the SP&S portion of this map, to the Milwaukee points shown in green west of Mobridge, between Mobridge and Missoula?

A. Well, prior to the year 1932, the SP&S had expressed its willingness to publish rates from Vernonia on the basis now effective. The Milwaukee refused to concur except on conditions which the SP&S did not meet.

The Oregon American Lumber Company—at that time it was the Central Coal and Coke Company—filed a complaint with the Commission, Docket 24364, Sub. No. 1, asking for the rates on the basis presently effective. The SP&S did not contest the application. The Commission in its decision concluded in the principal docket, West [fol. 1987] Coast Lumbermen's Association versus Big

Fork and International Falls, Docket 24364, 188 ICC 471, and order the publication of the rates as presently effective, but the decision did not impose the conditions which the Milwaukee had asserted as conditions under which it would voluntarily publish the rates.

Q. Now, what changes from the present rate applying from SP&S System points to points on the Milwaukee is the SP&S presently willing to make?

A. Well, the SP&S is willing, as it was in 1932—

Mr. Maguire: Just a moment. I move that the words "as it was in 1932" be stricken as not responsive to the question and as entirely argumentative. The question asked by Mr. Rockwood was: What rates is the SP&S presently willing to establish?

Exam. Dishman: Can you state that without referring back?

By Mr. Rockwood:

Q. Well, can—

Mr. Maguire: And without arguing it too.

The Witness: Well, the SP&S is willing to establish rates from the Santiam Branch applicable to Milwaukee points via Spokane on the same basis as is presently applicable from Oregon Electric main line points, such as Albany.

By Mr. Rockwood:

Q. Is that any different, that present willingness, any different from the instructions issued by you to Toll, Agent of the Transcontinental Freight Bureau, in 1932?

A. None whatever, sir.

[fol. 1988] Q. All right. What more is the SP&S willing to do?

A. The SP&S is willing to publish rates on the basis now applicable from SP&S points, except Santiam Branch to Milwaukee points east of Mobridge, to apply from all SP&S, Oregon Electric and Oregon Trunk points to all Milwaukee points between Spokane and Mobridge.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Rockwood:

Q. And just so there will be no ambiguity, are you willing to make the rates from the Santiam Branch apply to all Milwaukee points east of Spokane?

A. Yes, sir.

Q. Except that shown in red on this Exhibit 28?

A. Except that shown in red—except that shown in red and yellow and orange—pardon me—I'm getting my picture off.

Q. Except as shown in red and orange?

A. And orange, yes.

Q. And you're willing to publish rates from all SP&S System points to all points on the Milwaukee east of Spokane, subject to the restrictions as to movement beyond on connections as in effect today?

A. Yes, sir.

Q. All right. What is the present status of the matter of rates from the Santiam Branch under the first proposition? [fol. 1989] A. In fact, instructions have already been submitted to the Transcontinental Freight Bureau at Chicago to publish the rates from the Santiam Branch to the Milwaukee points east of Mobridge.

Q. That submission was made within the last month?

A. Yes, sir.

Mr. Maguire: While this hearing was going on, wasn't it, practically?

The Witness: Why, certainly. It was last month.

Mr. Maguire: I said that was put in while this hearing was going on, and I was out here, isn't that true?

The Witness: No. I'll give you the exact date if you wish it. The instructions were issued by the Great Northern office and the Northern Pacific office at St. Paul, Minnesota, on February 11th, 1955, to Mr. E. M. Edbrook, Chairman, Transcontinental Freight Bureau at Chicago, and a copy of the instructions were submitted to Mr. G. M.

Ryan, Freight Traffic Manager of the Milwaukee at Chicago.

By Mr. Rockwood:

Q. What if anything has happened with respect to the rates west of Mobridge within the second proposition of SP&S willingness which you described?

A. We're preparing instructions that will be submitted to the North Pacific Coast Freight Bureau for the establishment of those rates. It's not completely prepared. It will take some time to prepare them, but, when they are in order, we'll submit them to the Publishing Agent.

[fol. 1990] Q. Why—just so it will be clear—why is one set of instructions going to the Transcontinental Freight Bureau and the other going to North Pacific Coast Freight Bureau?

A. The rates—the lumber rates, as well as all other rates, provide that the rates from Mobridge—so far as the Milwaukee is concerned, rates from Mobridge and west are carried in North Pacific Coast Freight Bureau tariffs, and the rates from this territory—or between this territory and the territory east of Mobridge are carried in Transcontinental Freight Bureau tariffs.

Q. Now, all of the testimony which you have given with respect to rates apply solely to lumber and to no other commodity? That's correct, is it?

A. That is correct, sir.

Q. And your expressions of what the SP&S is willing to do apply solely to lumber and forest products and do not apply to any other commodity?

A. Yes, sir.

Mr. Rockwood: That's all the direct examination I have.

Exam. Dishman: Do you wish to defer your cross examination until he's finished?

Mr. Maguire: I would like to ask just one or two questions with the understanding that this will not be complete. I presume, Mr. Rockwood, that I can during the course of this hearing—the present hearing in Portland examine the [fol. 1991] letters that Mr. Ehlen has referred to?

Mr. Rockwood: Certainly. Will you put them together, Mr. Ehlen, and we'll make them available to Mr. Maguire and Mr. Engel, or any other authorized person.

The Witness: Yes, sir.

Cross examination.

By Mr. Maguire:

Q. May I look at the instructions issued to Mr. Edbrook of the Transcontinental Freight Bureau, dated February 11th, 1915?

A. 1955?

Q. 1955.

A. They're right on top.

Q. I note that this letter says, "This is a shipper's proposal, the proponent being Continental Forest Products Company, Cedar Rapids, Iowa." Is that correct?

A. Well, the instructions originated with our parent company, and I cannot testify as to whether it's correct or not. I assume it is.

Q. You don't know who the Continental Forest Products Company is?

A. I've heard of it.

Q. What is the nature of their business?

A. Well, they broker lumber. They ship lumber from mills in our territory. I know that to be a fact.

Q. The SP&S cannot, as a matter of procedure, not being [fol. 1992] a member of the Transcontinental Freight Bureau, the SP&S cannot under any circumstances issue any instructions as to any rate changes, can they?

A. We can issue instructions to the Transcontinental Freight Bureau. We did, as a matter of fact, in connection with the rates from the Santiam Branch in 1932.

Q. The SP&S itself did that?

A. Yes, sir, I have a copy of the letter here.

Q. Were they a member of the Transcontinental Freight Bureau?

A. We didn't have to be a member of the Transcontinental Freight Bureau to issue instructions.

Q. Were you a member of the Transcontinental Freight Bureau?

A. In an indirect way, the SP&S was a member.

Q. Was the SP&S Railway Company as such a member of the Transcontinental Freight Bureau?

A. Well, I can't answer that question.

Q. Do you know as a matter of fact as a matter of procedure that a railroad, which is not a member of the Transcontinental Freight Bureau, cannot issue instructions, but they must be issued through some other railroad which is a member, isn't that true?

A. No, sir.

Mr. Rockwood: Just a minute, Mr. Maguire. This is all embodied in the western traffic agreement?

Mr. Maguire: I'm not sure about that. I'm testing Mr. Ehlen's knowledge of it.

[fol. 1993] The Witness: We have issued instructions to the Transcontinental Freight Bureau from time to time for years, and we did issue the instructions in 1932, and I have a copy of the instructions with me; and a copy of those instructions were submitted to Mr. F. N. Hick, Western Traffic Manager of the Milwaukee in Seattle, and Mr. Toll acknowledged receipt of our instructions in the normal course of his business and next issued a rate advice.

By Mr. Maguire:

Q. Now, then, I gather you are unable to reply as to whether, under the articles of organization and procedure of the Western Traffic Association, you can do that at the present time? Do you know?

A. I think we can do that at the present time.

Q. Well, we'll follow that further in later cross examination, Mr. Ehlen.

Let's look at this map of yours, Exhibit No. 28, and particularly I'm interested in those points which are marked in orange, where there are no rates whatever with the Milwaukee between the SP&S System and as to which both the SP&S System and the Milwaukee concur on shipments of lumber originating on the SP&S System, regardless of whether it is routed through the Twin Cities or not. That's what that orange means, isn't it?

A. Yes, sir.

Q. You mentioned a number of other railroads besides the Great Northern and Northern Pacific which serve [fol. 1994] Duluth, the group of stations around Duluth and Superior. Do you recall that?

A. Yes, sir.

Q. Do these rates apply through the transfer via any of these other railroads?

A. Not through the transfer. They apply via the Great Northern and Northern Pacific direct.

Q. Yes, and you stated these points were served by other railroads?

A. Yes.

Q. But through these rates can traffic be shipped to Duluth and Superior, thence south via the DSS&A, for example?

A. Yes. We have routing via the DSS&A.

Q. Now, then, the station of Woodruff, which is on the line that runs up through Central, Wisconsin, that is also served by either the North Western or the Omaha, I think you said.

A. By the North Western.

Q. Yes. Are there any rates covering shipments moving from SP&S origins through the Twin Cities to Woodruff in which either the North Western or the Omaha, as the case may be, participates?

A. The rates are published via the North Western.

Q. So that the North Western can take a lumber shipment destined to Woodruff from the Great Northern or Northern Pacific at the Twin Cities and carry it through to Woodruff?

A. Yes, sir.

Q. But the Milwaukee may not?

[fol. 1995] A. The North Western would—

Q. Will you answer the question, please, first?

A. It may not, yes.

Mr. Rockwood: Go ahead and explain it if you want to.

Mr. Maguire: He can explain it, yes.

The Witness: The station of Woodruff that I have marked, I tried to bring out it doesn't mean anything because you don't even have rates on lumber from your own points to that particular point.

By Mr. Maguire:

Q. To Woodruff?

A. Not the way we check it, sir.

Q. You'll be cross examined further on that too at St. Paul.

A. All right.

Mr. Maguire: I think I'll wait for the rest of Mr. Ehlen's cross examination until the St. Paul hearing.

Exam. Dishman: Is that all, Mr. Rockwood?

Mr. Rockwood: That's quite satisfactory with me unless some of the other—

Mr. Pease: I'll defer all my cross examination.

Exam. Dishman: All right, witness excused.

(Witness excused.)

Mr. Rockwood: I'll call Mr. Veldman.

R. R. VELDMAN was sworn and testified as follows:

Direct examination.

[fol. 1996] By Mr. Rockwood:

Q. What is your name, please?

A. R. R. Veldman.

Q. Where do you live?

A. Libby, Montana.

Q. And by whom are you employed and in what capacity?

A. I'm employed by J. Neils Lumber Company as Traffic Manager for its plants in the state of Montana and Washington.

Q. How long have you been Traffic Manager for J. Neils Lumber Company?

A. Since 1919.

Q. Are you a member of any committee of the Western Pine Association?

A. Yes, sir.

Q. What?

A. I'm a member of the Traffic Committee of Western Pine Association.

Q. How long have you been a member of the Traffic Committee of the Association?

A. I began in 1919.

Q. And do you regularly attend meetings of that committee?

A. Yes, sir. I think I have missed one in the time since I first joined.

Q. That committee consists of representatives of what territory, or what area do they embrace?

A. All of the pine belt from the Canadian border to the Mexican border.

[fol. 1997] Q. And how far east?

A. It takes in Arizona, New Mexico, part of Colorado, some in Wyoming, Utah, Montana.

Q. In what business is J. Neils Lumber Company engaged?

A. In lumber and logging. It has a treating plant.

Q. Where are its plants?

A. The largest plant is at Libby, Montana. We have a small one at Troy, Montana, and a plant at Klickitat, Washington.

Q. And Klickitat is on the end of the—it's on the Goldendale branch of the SP&S?

A. That's right.

Q. Is the Klickitat plant served by any railroad other than the SP&S?

A. No.

Q. By what railroad or railroads are the Troy and Libby plants served?

A. Great Northern.

Q. Do you engage in business in the disposal of your own manufactured product, or do you also do business or engage in the business of wholesaling in disposing of products manufactured by others?

A. We just engage in the disposal of our own products.

Q. How is the Sales Department of J. Neils Lumber Company organized? By what methods do you dispose of or make sales of your products?

[fol. 1998] A. We have our own sales office in New York, in Chicago, one at Columbus, Wisconsin, just out of Milwaukee, one at Minneapolis, one at Fargo, Great Falls,

Montana, and in January we moved our Billings, Montana, office to Denver.

Q. And in addition to those—are those gentlemen in those offices on the payroll of the J. Neils Lumber Company?

A. Everyone of them except one who was trained in our own office at Libby.

Q. And they're on the payroll?

A. Yes, sir.

Q. What outlets do you use other than those gentlemen directly on your payroll?

A. We have a few commission agents. For instance, in the state of Nebraska, we have allotted the whole state of Nebraska to Harris-Proudfit. We don't send any salesmen of our own in there. In the state of Iowa, we have a firm, Cowan & Cowan, at Waterloo, Iowa. They've handled our business there for more than 50 years.

In the state of Ohio, we have a man on commission.

Q. And do you use other commission houses and brokers throughout the United States at other points?

A. There are a few other points where we do a small share of our business, of our commission business.

Q. In this record, there has been a description and much discussion of what has been termed as a transit car, that [fol. 1999] is, the car which starts out from the manufacturing point without a sale being made, without determining what the final destination would be, as distinguished from the firm car on which the ultimate buyer is determined before the car leaves the mill.

What type of business do you engage in? Firm or transit, or both?

A. A hundred per cent firm.

Q. What is the—these figures will be shown in possibly more detail—what is the approximate number of cars shipped annually from your mills at Klickitat and Libby and Troy?

A. Around 1300 cars from Klickitat, and about 4100 cars from Libby.

Q. Have you prepared an exhibit which contains data which I requested from you; certain statistical data relating to the operations of J. Neils Lumber Company?

A. Yes, sir.

Mr. Rockwood: I ask that there be marked for identification as Exhibit No. 29 an 8½ by 11 exhibit bearing Mr. Veldman's name on the front cover.

Exam. Dishman: Exhibit 29.

(Defendant's Exhibit No. 29, Witness Veldman, was marked for identification.)

By Mr. Rockwood:

Q. Is this exhibit, which has been marked Exhibit 29, the exhibit containing the data which you have just described? [fol. 2000] A. Yes, it is.

Q. I refer you to Page 2 of the exhibit. Is that a correct statement for the three years last past of the distribution of your sales out of your Klickitat mill?

A. That is correct. It does not include a few cars that were local, intrastate in the state of Washington.

Q. Well, except for that, it's a complete statement of your carload shipments?

A. That's right.

Q. Turn to the next page, Page 3. Is that likewise a correct statement of the distribution of your sales by states covering shipments from the Libby mill in the last three years?

A. Yes, sir. Again I will qualify it. I did not include the cars of shavings or briquettes; anything that's a rather short haul, within 50 miles, are local.

Q. On Page 3, I notice that for the state of Montana you have 1603 carloads in Montana in the last three years, which is about a third—the third largest consumption of any of the states which are shown—the second largest—in fact, it's the largest shown on that sheet.

Can you tell us the occasion for the large number of carloads into the state of Montana?

A. Considerably more than 50 per cent of that figure represents sales to the Great Northern and the CB&Q at Billings, Montana.

Q. The Great Northern shipments would be loaded on [fol. 2001] cars and handled as company material immediately from Libby?

A. Yes, but our distribution in our records, we show the state of Montana.

Q. The state of Montana?

A. Yes.

Q. And sales to the Chicago, Burlington & Quincy, you would deliver those to the Burlington at what station?

A. Billings, Montana.

Q. I notice for the state of South Dakota you show in the three year period 448 carloads. Was there any peculiarity of the product that constituted that—that made up that 448 carloads? Can you tell us what they were in large measure?

A. Well, 304 carloads of the 448 total represent poles, treated, that went to points in South Dakota. Most of them moved in connection with the Milwaukee Railroad through Butte; some—just a few through Aberdeen.

Q. And who was the customer who took those poles?

A. Generally speaking, the Rural Electrification.

Q. Administration?

A. Administration, yes.

Q. Do you have for each one of the years, '52, '53 and '54, the number of carloads which were made up of poles and included in the figures for those three years in the South Dakota tabulation? Can you tell us how many poles in each year?

A. There was 148 carloads in 1952, 88 in 1953, and 68 in 1954.

[fol. 2002] Q. And that's the total of the 304 that you stated a moment ago?

A. Yes.

Q. Have you seen, while you have been waiting around to testify, a copy of this map which was introduced by Mr. Ehlen?

A. Yes, I have.

Q. Exhibit 28?

A. Yes, I have a copy.

Q. Did your company do much business in the territory shown on that map colored blue and west thereof to Spokane?

A. Well, in the area colored blue, we do a reasonably nice business. In the area green, beginning at the Montana state line and east, we ship a lot of treated poles.

Q. Yes. Well, when you say you did a pretty good business, was that out of your Klickitat plant or out of Libby?

A. Generally speaking, it's out of Libby.

Q. So that the shipments out of Klickitat are comparatively small?

A. Yes.

Q. Compared to Libby into that territory shown in blue?

A. That is right.

Q. What competition do you run into in the state of Montana for your sales, either from Klickitat or Libby?

A. In what particular territory?

Q. In Montana, in the state of Montana.

[fol. 2003] A. Well, on the Great Northern, we are in competition with the Kalispell Columbia Falls mills where there is heavy trucking of lumber into Montana. Ours is all rail, and it's been showing up pretty strong the last few years.

Q. What about competition in southern Montana? Do you get into that territory?

A. On the NP and—

Q. On the Milwaukee and the Northern Pacific?

A. On the Milwaukee, very little. We do have a few cars on that higher portion of the green section from Agawam to Winnett. That is on combination rates to Great Falls and Lewistown. In the lower portions, we get some poles in there, but no lumber. We have very keen competition there with mills at Missoula and Marlowton.

Q. On the Northern Pacific and the Milwaukee?

A. Yes.

Q. Well, now turning back to your Exhibit No. 29, Page 4, what is it you show?

A. We show the quantity and specie of lumber, poles and box shook shipped by each of our mills.

Q. I notice that for the Libby, Montana, production spruce has been increasing, the percentage of your total production. Is there any explanation you can give of the increases in spruce?

A. For many years, we did not produce much spruce in that section, but, beginning in 1952, we had a bark beetle in-

[fol. 2004] festation in the spruce timber that covered our own as well as the Forest Service timber. In order to

salvage as much of that as possible, we were and are doing some very heavy logging in that specie at the present time.

Q. Is that a normal situation, or abnormal because of the beetle?

A. That's an abnormal situation.

Q. For your Klickitat production, you show only two species, fir and Ponderosa pine, and your percentages of Ponderosa pine have been increasing in the last three years, reaching a maximum of 94.5 per cent of your total of the year 1954. At Klickitat, do you expect it to be a preponderantly Ponderosa pine production, instead of replacing it with some other specie?

A. It is and always will be a heavy commodity.

Q. You own your own timber in the Klickitat area?

A. Yes.

Q. Are you lined up for selective logging at that show that will make that a perpetual operation?

A. Yes. We began that very, very early and are one of the pioneers in selective logging at both plants.

Q. Turn to the next page of your exhibit, Page 5, and explain what you think is necessary on what those figures are.

A. Well, those figures represent the percentages of Ponderosa pine production that was manufactured into shop lumber grades. These percentages are not of the total, but of the Ponderosa pine production.

[fol. 2095] Q. Not the production, total production of all species, but only the Ponderosa pine production?

A. That's right.

Q. In other words, only 16 per cent of your Ponderosa at Libby was shop?

A. At Klickitat.

Q. At Klickitat, rather, and 6.6 per cent of Ponderosa produced at Libby was shop. Why were you able, or why did you produce a higher percentage of shop lumber from your Ponderosa at Klickitat than you did at Libby?

A. Well, it's a different type of tree at Klickitat, that produces shop lumber. Only Libby Ponderosa pine has more knots and does not produce a board which could be used as shop lumber.

Q. Are you familiar with the general topographical situation in the neighborhood of St. Maries, Idaho?

A. In a general way.

Q. What is the—have you been over in that area?

A. Just some years ago I was in that area, and I took a lot of pictures in that area at one time.

Q. Do you know what the comparative elevations of St. Maries and Libby are?

A. My recollection is that they are quite similar.

Q. Does elevation have anything to do with the size of the tree that you may expect to find?

A. Yes.

[fol. 2006] Q. What is it? The higher the better, or the higher the worse?

A. Well, the higher the slower the growth. You have a small type of knot tree.

Q. From your general observation, is the type of timber in the neighborhood of St. Maries similar to the type in which you're operating at Libby?

A. Yes.

Mr. Maguire: Now, just a moment. Mr. Examiner, the witness hasn't shown that he—all he has said is that it's something around the same altitude, and, unless he can show some familiarity with the timber at St. Maries, I don't believe he's in a position to compare. .

Mr. Rockwood: He's been in the timber, gone through the timber.

Exam. Dishman: Are you familiar with it?

Mr. Maguire: If he is, let him say so.

Mr. Rockwood: That's what he says, that he's gone through it.

The Witness: I might qualify that. About four or five years ago, I took pictures of a very large area in western Montana on loads of logs. We had some difficulty with our Montana Commission on highway loads, and I took pictures of Highway No. 2 for a distance of 125 miles east and on Highway 10, the Missoula area, Highway No. 93 in Montana. That would be about 275 miles from Libby, Montana. Then I also did the same thing in Idaho, on Highway No. 2 and Highway No. 10, almost from Spokane to Kellogg, and then [fol. 2007] passed St. Maries.

By Mr. Rockwood:

Q. And that way you became familiar with the type of timber being logged in the St. Maries area?

A. Yes.

Q. Well, now, from that information and from your knowledge of the timber in which your own company is operating, is the St. Maries lumber more nearly similar to the Libby lumber—or the Libby timber than it is to the Klickitat timber?

A. The Ponderosa pine is. They have more white pine than we do.

Q. Do you in your Libby operation endeavor to get as much shop lumber as you can from the log, or what? Is shop lumber desirable?

A. We always have a demand for it, yes.

Q. And you get as much of it as you can out of the log?

A. That is correct.

Q. And you were able to get from 3.2 per cent up to 6.6. Were you able to do better, or was that as good as you could have done?

A. That's as good as we can do.

Q. From your knowledge of the timber in the St. Maries area, would you expect that timber to produce a larger or smaller percentage of shop lumber?

A. It would be about the same.

Q. You have testified that you have been in this business as the Traffic Manager since 1919. In that period—I'm not [fol. 2008] going to ask you to go into detail, but in that period you have become familiar with the rail routes that are available for disposition of lumber from your Klickitat mill and from your Libby, Montana, mill?

A. Yes, sir.

Q. With all rates and all routes and all railroads serving that portion of the country?

A. Yes.

Q. Do you engage in the practice at Libby of stopping cars to complete loading?

A. Yes, we do some.

Q. Do you have cars, for which you have complete loading, from your own plant at Klickitat?

A. Yes.

Q. And from your own plant at Troy?

A. Yes.

Q. What is the occasion for such stops? Just to even off the inventory?

A. Shortage of materials at Libby, or shortage at Klickitat, and Troy the same way.

Q. Excluding those intraplant stops, which are possibly peculiar to your plants because you've got the three plants, have you stopped cars to complete loading, that is, cars from west of Spokane other than from your own plants?

A. Yes, sir.

[fol. 2009] Q. Have you a record, or have you determined the fact as to what stops you made in the years 1952, 1953, and 1954, from points west of Spokane, with a determination further of the number of those cars that came from other points on the SP&S? Have you determined those figures?

A. Yes.

Q. How many such cars were stopped in the year 1952, and how many from points on the SP&S?

A. In 1952, it was from a point on the SP&S, one car.

Q. And that was the only one you stopped, other than your intraplant?

A. Yes, sir.

Q. In 1953, how many were stopped?

A. Sixteen west of Spokane; five from points on the SP&S.

Q. Included in the 16?

A. No.

Q. Sixteen, including five from points on the SP&S, or 21 altogether?

A. Twenty-one altogether.

Q. In 1954—will you check that figure? I don't know as to whether the 16 includes the five.

A. Twenty-one cars.

Q. Of which five were from SP&S points?

A. Yes.

Q. In 1954, what was the record? How many cars were [fol. 2010] there, and out of those how many were from SP&S points?

A. Twenty-five cars, of which there was one from the SP&S.

Q. Does your company engage in the business of or the practice of shipping out a car for partial unloading at one station and completion of unloading at another destination?

A. Yes.

Q. In what territory is that practice engaged in?

A. Both mills.

Q. In what destination territory?

A. It would be in Illinois, Minnesota, Iowa, and points east of Chicago, right in that territory.

Q. Anything west of the Minnesota-Dakota line or the Iowa-South Dakota line?

A. I don't recall of any in that territory. It may be possible, but I don't recall of any.

Q. Have you ever indulged in that practice of stopping a car in one rate territory for partial unloading, for movement beyond to another rate territory?

A. I don't recall of any.

Q. In other words—let me reframe my question. What is the objection to stopping a car at some point west of Chicago for partial unloading and moving to a point east of Chicago to complete unloading?

A. We had some material like that not too long ago and had to pay the rate to the most distant point.

[fol. 2011] Q. And the rate is different east than west?

A. Yes.

Q. Is there any difference in the car minima?

A. There's lots of difference in car minima, yes.

Q. What is the effect of that difference as it applies under that practice?

A. It becomes too costly.

Q. What has been your experience, the experience of your company on rejection by the buyer at the billed destination of the car involving the necessity for diversion to another destination? What has been your experience in that?

A. We have had none.

Q. Have you ever had the problem of an adjustment with the customer at the billed destination which did not involve a diversion to another destination?

A. Yes.

Q. But you cannot remember now that it was necessary to divert it?

A. No.

Q. Are all sales made subject to the standards of any associations?

A. All sales of lumber are made subject to the standards set by the Western Pine Association.

Q. On pine lumber?

A. Pardon?

[fol. 2012] Q. On pine lumber?

A. No. It goes into larch.

Q. What about fir?

A. Fir is—the fir we ship from Klickitat is made subject to the West Coast Association's standard.

Q. West Coast Lumbermen's Association?

A. Yes.

Q. Are you a member at Klickitat of both Western Pine and West Coast Lumbermen's Association?

A. The Klickitat plant is a member of both associations.

Q. And is Libby a member of either or both?

A. Libby is a member of the Western Pine Association.

Q. Only?

A. Only, and our poles—they're checked at point of loading by inspectors.

Q. Have you prepared an exhibit showing the experience of J. Neils Lumber Company in the sale of shop lumber to factories engaged in the sash and door business and allied businesses in the middle west?

A. I have.

Mr. Rockwood: I ask that there be marked for identification as Exhibit No. 30 a statement, the title of which begins, "Exhibit showing number of carloads of lumber shipped . . ." and so forth.

Exam. Dishman: It will be so marked.

[fol. 2013] (Defendant's Exhibit No. 30, Witness Veldman, was marked for identification.)

By Mr. Rockwood:

Q. This Exhibit No. 30 is the exhibit prepared by you that I have just referred to?

A. Yes.

Q. Tell us very briefly what the general purport of this exhibit is.

A. It shows the number of carloads of lumber shipped from our Klickitat, Washington, plant to the transit houses located in Minnesota, Wisconsin, Iowa and Missouri. These houses received the shop lumber that we shipped from Klickitat.

Q. Are these shipments, included in Exhibit 30, entirely shipments of shop lumber?

A. Yes. They represent four years.

Q. Yes. You show over here on Page 2 a total on this exhibit of 819 carloads in the four years. Is that your total output of shop lumber at Klickitat in the four years?

A. No. We had small shipments to factories in Portland and in Spokane that are not included in this list.

Q. And except for those shipped to Portland and Spokane, this is your entire output of shop lumber in the four year period?

A. Yes.

Mr. Maguire: And for clarification, should this exhibit read, "Exhibit showing number of carloads of shop lumber shipped by J. Neils . . ."?

[fol. 2014] Mr. Rockwood: That's right. It is shop lumber, as the witness explained.

By Mr. Rockwood:

Q. Running down through the routing shown on this sheet, are those routes there shown in every case routes over which single factor rates apply from Klickitat, Washington, to the destinations and the locations of the plant or the factory?

A. Yes, sir.

Q. And do the rates apply over these routes which would permit the manufacture in transit at these factories, and shipment of the finished product on to eastern destinations?

A. That's my understanding.

Q. And other parts of the United States?

A. Yes.

Q. Do you have any difficulty whatsoever in delivering shop lumber to factories in the middle west under the existing rates?

A. No, sir.

Q. Would the—you're familiar with the request of the Milwaukee in this case for additional joint through rates with the SP&S via Spokane to the Milwaukee and its connections? You're familiar generally with what they're asking for?

A. Yes.

Q. Would the addition of the route as now requested by the Milwaukee be of any assistance to your company in the marketing of your products from the Klickitat and Libby mills?

[fol. 2015] A. No, sir.

Q. Are the present available routes that you have eastbound from Klickitat and Libby adequate to take care of all your business?

A. Yes, sir.

Q. Would the addition of the Milwaukee route that's being requested assist in the solution of any problem which you may have with respect to stopping cars to complete loading, or stopping cars for partial unloading, or for the disposition of cars as to which there may be dispute? Would the additional route be of any assistance on any of those?

A. No, sir.

Q. You're served at Klickitat only by the SP&S?

A. That is right.

Q. What has been your experience in the last several years with respect to supply of cars available for loading at Klickitat?

A. The last few years we've had no difficulty. Some years ago, of course, we ran into car shortages.

Q. Was that—you say some years ago. What was the general situation in the car supply in the Pacific Northwest at that time?

A. There was a shortage always at that time.

Q. Are you familiar at all with the methods used by railroads in distributing cars to take care of a shortage in one area where there might be an overage in another area?

[fol. 2016] A. Yes, to some extent.

Q. Do you know through what agency that's handled?

A. Yes.

Q. What?

A. The AAR—Association of American Railroads.

Q. From your experience in the shipment of lumber from this area, what in your opinion would be the effect on the car supply of the SP&S by the addition of the Milwaukee route? Would there be a tendency to better or worsen it, or leave it as it is?

A. There would be no difference.

OFFERS IN EVIDENCE

Mr. Rockwood: I offer in evidence Exhibits Nos. 29 and 30.

Mr. Maguire: No objection.

Exam. Dishman: They are received.

(Defendant's Exhibits Nos. 29 and 30, Witness Veldman, were received in evidence.)

Mr. Rockwood: Some of my associates over here have some questions.

Mr. Torinus: I have some questions in the nature of further direct.

By Mr. Torinus:

Q. Mr. Veldman, has your firm ever—does it ever route any cars or permit the routing of any of its cars so as to secure a delay in transit?

A. We are very opposed to that practice. We do not use it.

Q. Will you explain why, sir?

Mr. Maguire: Just a moment, Mr. Veldman. I fail to [fol. 2017] see the connection between the practice of Mr. Veldman's firm as to delaying cars in transit and the issues in this case.

Exam. Dishman: Will you connect them up, Mr. Torinus?

Mr. Torinus: I'd be very glad to. Mr. Examiner, there has been testimony in the record, and I refer specifically to the testimony of Witness Titus, beginning on Page 665, to the effect that the Milwaukee route—or the route from points on the SP&S via the Milwaukee Railroad to points east of Spokane would be a benefit to members of the Western Forestry Industries Association, an organization which he represented.

He listed five reasons why, in his opinion, that route might benefit the members of his association, and on Page 667 he described the practice of loading and shipping so-called transit cars, billed to a convenient junction point in the midwest or east, whereby the seller looked for a buyer, and, when one was found, the transit was then diverted to his place of business.

On cross examination on Page 672, this witness testified that users of these so-called transit cars or roller cars liked a little delay. Mr. Rockwood asked him this question, "In many instances, delay gives them that much more time to dispose of the car in transit?"

Answer: "That's correct."

"Many of your shippers using these roller cars?" That was another question. "Many of your shippers using these cars purposely select circuitous routes which may be open [fol. 2018] under the tariff for the very purpose of obtaining delay?"

Answer: "Yes." And the answer to that was that it kept the car tied up longer than if it moved over the direct route.

Now, with that testimony in the case as evidence in support of the Milwaukee that its route is desired by so-called transit operators who, this witness testified, liked a little delay and utilized certain routes for the purpose of obtaining delay, I think we're entitled to bring out in defense what objections there are to such practice. I think that goes to the very heart of the public interest, the question in this case.

Mr. Maguire: In the first place—are you through for the moment?

Mr. Torinus: For the moment, I'm through.

Mr. Maguire: Yes. In the first place, Mr. Torinus, in referring to Page 667, did not mention anything, and I find nothing in Mr. Titus' testimony on Page 667 with regard to circuitous routes or delays in transit at all.

Now, then, he omitted to point out to the Examiner—he started in by saying—by quoting, "As a matter of fact, some of your shippers or a good many of your shippers on these rolling cars like a little delay, don't they?"

"Yes," the answer was, "on rollers they do."

Mr. Rockwood was cross examining. Now, the two sentences immediately preceding the part that Mr. Torinus quoted are as follows—the two best ones:

[fol. 2019] "What do you know as to the fact as to speed of service by car ferry across Lake Michigan? Is that route faster or slower than movement through the Chicago terminals? Do you know?"

Answer: "I do not know personally, no. It's just hearsay."

Question: "Then, in the statement that you talked about a moment ago, the delay in using the lake route—"

Answer: "I'm told by members of our association, who do use that, that that is true."

Then they get into this discussion of roller cars, and, as a matter of fact, that was just as irrelevant to the issue as this is. I didn't see fit to object to it at the time, but just the mere fact that I did not object at one time doesn't make this any more admissible.

There is nothing—we are not proposing a circuitous route, in the first place. We have not said that we will be able to afford facilities whereby shippers can put cars into hold and hold them back, transit operators. Nothing of that sort is claimed. So, therefore, in asking Mr. Veldman's opinion as to the desirability, the non-desirability, the morals, or lack of morals in delaying cars, Mr. Torinus is just simply putting up a strong man to be knocked over, and I can see no sense in talking about it.

Exam. Dishman: I don't know how relevant this is going to be, but I will let the witness answer it.

Mr. Pease: Mr. Examiner, if I might point out, this [fol. 2020] witness has already testified that all of his business—that he doesn't do any transit business at all.

Exam. Dishman: Is that right? These roller cars—

The Witness: Our business is all firm order business and we do a little with wholesalers, but we do not accept orders from wholesalers who want to put in roller cars.

Mr. Maguire: He doesn't deal with them at all.

Exam. Dishman: You don't deal in that situation then.

Mr. Torinus: Mr. Examiner, the very point to the line of questioning I was about to commence is the effect on the business of shippers such as Mr. Veldman of indulging in the so-called transit operation.

Now, it certainly should be pertinent in a case where public interest is of primary importance.

Exam. Dishman: Well, I'll let the witness answer as to what objections he has to doing transit business. Do you have opportunities to do that kind of business?

The Witness: Certainly.

Exam. Dishman: You may state why you don't.

The Witness: It would tie up the cars as warehouses and hold them as warehouses on the railroads for long periods of time when there are car shortages. Now, this year the lumber business is pretty fast, and we're certainly opposed—

Exam. Dishman: Pretty fast? What do you mean?

The Witness: Pretty fast. That is, business is good, and, [fol. 2021] if those practices prevail, mills like ours, who have large shipments to make, numerous shipments, we would not be able to get the cars.

Exam. Dishman: That's your chief objection?

The Witness: Yes.

Exam. Dishman: All right.

By Mr. Torinus:

Q. Now, Mr. Veldman, do you know whether or not there is a diversion point on the Milwaukee Railroad which is used by shippers of transit cars?

A. Yes.

Q. Do you know what that point is?

A. Canton, South Dakota.

Q. Is that a point on the main line of the Milwaukee?

A. No.

Q. Where is it with reference to the main line of the Milwaukee from Spokane to Minnesota Transfer, Mr. Veldman?

A. It's considerably out of line of the main line railroad from Spokane to Minnesota Transfer. It's south.

Q. Could you examine the map, which has been introduced in evidence, Mr. Ehlen's Exhibit No. 28, and indicate to us just where Canton, South Dakota, is?

A. It's pretty small.

Q. Maybe I can show you Exhibit No. 9, which is Mr. Engel's exhibit, which is a larger map.

Mr. Maguire: Just a moment. It seems to me, Mr. Ex-
[fol. 2022] aminer, we've gotten into—I think the location of Canton has been pointed out by other witnesses, and I believe that Counsel has plenty of foundation in the record for argument about any of these so-called circuitous routes.

So, taking this time to have this witness hunt around through the maps to find Canton, I think is useless.

Exam. Dishman: Well, show it to him.

Mr. Maguire: Yes, find out from him. You can lead him that far.

By Mr. Torinus:

Q. Showing you Mr. Engel's Exhibit 9, Mr. Rockwood has circled Canton, South Dakota, in pencil. Can you just state for the record where that is with respect to the Milwaukee's main line from Spokane to Minnesota Transfer?

A. It is south, 'way south of Aberdeen, South Dakota, and it's south of Sioux Falls.

Q. Now, where is it with respect to the Milwaukee's line from Aberdeen to Mitchell, Yankton, and Sioux City, down to Omaha—Council Bluffs and Omaha? Is it on that line?

A. It's not on that line. It's east and north of that line.

Q. Now, normally, when a wholesaler or any other shipper consigns a carload of lumber to a diversion point, or a carload of any other commodity, where it's desired to obtain prompt service, does he consign the car to a diversion point that's off the main line?

A. No, sir.

[fol. 2023] Q. What is the effect of utilizing a diversion point upon a railroad, which diversion point is off the main line?

A. The—it results in considerable delay.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Torinus:

Q. Can you explain just how that delay results, Mr. Veldman?

Mr. Maguire: Just a moment, Mr. Veldman. My objection runs to this entire line of questioning.

Exam. Dishman: Yes.

The Witness: It causes a railroad to haul considerably out of line to points that have service perhaps only two or three times a week, and the car—the delay to the car results in several days lost in transit, sometimes even as much as two or three weeks.

By Mr. Torinus:

Q. Now, Mr. Veldman, how about getting the car out of the diversion point back into the through train service?

A. That again takes more time than to put it on the regular main line diversion point.

Q. What effect, Mr. Veldman, would the granting of the Milwaukee's complaint have upon your business if the through routes and joint rates requested by the Milwaukee in this complaint were granted, and this route through Canton, South Dakota, were to be utilized by so-called [fol. 2024] transit operators?

A. It would just be another line on which they could delay cars. It would be a diversion point for delay.

Mr. Maguire: Just a moment. I move that be stricken as not responsive to the question. The question was what effect the granting of these rates with this additional route would have upon their business. Mr. Veldman has not answered that.

Exam. Dishman: Do you understand the question, Mr. Witness?

The Witness: Yes.

Mr. Maguire: How would it hurt him, as I get it.

The Witness: It hurts us in getting car supply in times of car shortage. We've had many of those in years past.

Mr. Torinus: I have no further questions.

Exam. Dishman: We'll take a short recess.

(Short recess taken.)

Exam. Dishman: The hearing will be resumed, gentlemen.

Are there any more questions on direct?

Mr. Rockwood: I think that's all. We're ready for cross.

Cross examination.

By Mr. Maguire:

Q. Mr. Veldman, do you know anything about this tariff route through Canton, South Dakota, of your personal knowledge, other than the fact that it is in the tariff, of your personal knowledge?

A. You mean through use of it?

Q. Yes.

[fol. 2025] A. I have no occasion to use it.

Q. And are you also familiar with the fact that there is a tariff route on the Northern Pacific which leaves their main traveled line at Jamestown, North Dakota, and goes down through Oaks, and then finally gets back onto the main line—the main traveled line toward the Twin Cities?

A. I'll make the same answer to that: I have no occasion to use it, but I know it is there.

Q. And from your knowledge of the two tariff routes which you have, is one any worse than the other from your point of view?

A. No, it is not.

Q. Now, on your refused shipments, I gather that it is the policy of your company to make whatever adjustment you can with your purchaser at the billed destination, or the party to whom you ship your firm order, rather than to try

to divert the car elsewhere and dispose of it at the invoice price or as near the invoice price as possible?

A. Mr. Maguire, I don't recall of a refused shipment. We have had occasional cases where a settlement was made with the customer.

Q. Do you ever have any difficulties on the tally which shows up before your car arrives?

A. No.

Q. You never had any of that?

A. No.

[fol. 2026] Q. Now, then, so far as the rates—leaving routes out of the question—the proposed rates of the Milwaukee are concerned—by the way, do you know what the Milwaukee proposal is?

A. I read the complaint.

Q. Well, the proposed rates in themselves, will they do you any harm, do your business any harm?

A. No.

Q. And the only harm is if there is a car shortage, and if anyone uses this route through Canton, the car shortage would be aggravated, is that your position?

A. Yes.

Q. And so your shipments, so far as your company is concerned, are practically confined to shipments from your Klickitat mill and your other mills, and those shipments are made from lumber secured adjacent to those mills and manufactured at the plants, is that right?

A. Just about a hundred per cent of them.

Q. You have no occasion then, normal occasion, to go out and procure lumber from any other source for sale to your customers? You fulfill them? You fulfill all of your needs out of your own plants?

A. Just about a hundred per cent.

Q. And so the pattern of your sales has been adjusted to the rates as they now exist, isn't that true?

A. Yes.

[fol. 2027] Q. And you are able under the present pattern of rates and your consequent pattern of business to reasonably dispose of your products?

A. Mr. Maguire, for a period of years, I've made adjustment for the through joint rates that I needed, and

I just about—I still have some more to do on poles, but on lumber I've just about made the adjustment, on lumber.

Q. You came here, I presume, at the request of the Great Northern, did you not?

A. I came here at the request of the Board of Directors of J. Neils Lumber Company.

Q. And do you know who made the request upon them?

A. No. The President of our company told me to—

Q. I think you misheard my question. I said: Do you know who made any request upon them, upon the management?

A. Well, I wasn't there.

Q. All right, that's a minor point, Mr. Veldman, and, of course, the effect upon you of the Canton route in case of a car shortage would be if someone used that route, isn't that true?

A. It just helps to aggravate the situation, yes.

Q. Now, you stated also that the Association of American Railroads handles the distribution of cars in case of car shortages, did you not?

A. It is one of the agencies that is used for that purpose.

Q. And do you know that the Association of American [fol. 2028] Railroads only allocates what the railroads themselves report as excess cars?

A. No, I'm not familiar with that rule.

Mr. Maguire: That's all. Thank you.

Exam. Dishman: Any more questions?

Mr. Rockwood: Is that your cross examination?

Mr. Maguire: I'm through.

Mr. Rockwood: That's all, Mr. Veldman.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Rockwood: Call Mr. Jewett.

C. M. JEWETT was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you please state your name and residence to the Reporter, please?

A. My name is C. M. Jewett. Do you want the business address?

Q. Business address.

A. Builders Exchange Building, Portland, Oregon.

Q. With what company are you connected?

A. Jewett-Cameron Lumber Company.

Q. And what is your capacity with that company?

A. I'm President and General Manager.

Q. And the general office of that company is in Portland?

A. In Portland.

Q. How long have you been engaged in the business—I [fol. 2029] take it your company is in the business of the sale and distribution of forest products?

A. Yes.

Q. How long have you been engaged in that business?

A. This company, since October—a year ago last October.

Q. Well, altogether in Oregon and in this territory?

A. Ten years.

Q. Before that, you had some experience in the lumber business?

A. Yes.

Q. Running back how far?

A. Well, I've been in the lumber business since 1918.

Mr. Maguire: I'm sorry. I didn't hear that.

The Witness: 1918.

By Mr. Rockwood:

Q. Is your company engaged in the manufacture of lumber, or are you in the sale of lumber manufactured by others?

A. We're strictly wholesale. We don't manufacture.

Q. Does your company have any sales organization outside of Portland, or, if not, what is the method used by you in disposing of the lumber handled by you as a wholesaler?

A. With the exception of our own organization in Portland, we sell through commission men and other wholesalers.

Q. Located in Portland, or in the west, or in the east, or where?

A. Generally, in the east and midwest.

Q. Do you have some direct accounts that you sell directly?

[fol. 2030] A. Yes, we do.

Q. You have heard the description of what has been referred to in the record here as transit cars and firm cars. Do you engage in business of both types, or in one only?

A. Both.

Q. Approximately what is the distribution of your business between firm sales and transit sales?

A. I imagine—I think 90 per cent of our business is firm.

Q. And the balance is transit?

A. Transit.

Q. Approximately how many cars a year do you handle as a wholesaler?

A. Approximately 1100 cars.

Q. What is the product and species that you handle?

A. We handle Douglas fir, boards in dimension, hemlock, Ponderosa pine, fir, larch, spruce, Idaho white pine, in lumber items principally.

Q. Where are the mills located for which you handle sales?

A. They're located in a lot of places. Our main source of supply—

Q. Well, the extent. How far north, how far south, how far east?

A. We ship out of Prineville, Oregon; Bend; Caldwell, Idaho—

Q. As you go along, just state the names of the railroads. All those are on what railroad?

[fol. 2031] A. The Union Pacific.

Q. And Bend is on both the Union Pacific and Oregon Trunk?

A. That's right.

Q. Prineville is on the City of Prineville, which connects with the Oregon Trunk and Union Pacific?

A. That's right.

Q. All right, go ahead.

A. We ship from points in Washington on the Milwaukee and the Great Northern, and points in Washington on the SP&S—that is, Hood River—

Q. Well, Hood River is on the Union Pacific?

A. Not Hood River, but Hood.

Q. Hood? That's on the SP&S?

A. Yes. We ship from Odell on the Mount Hood Railway, which connects with the Union Pacific. We ship from Klamath Falls, Oregon, on the SP.

Q. Does your business run heavier to one species than another?

A. I think the bulk of our business is in pine and its associate species.

Q. From the mills that manufacture pine?

A. That's right.

Q. Do you buy any from mills on the Santiam Branch of the Oregon Electric?

A. Our fir department buys some from that branch.

Q. What are the largest communities east of Spokane [fol. 2032] in which you market lumber?

A. May I refer to a schedule?

Q. Just a minute. Did you prepare and furnish to me at my request a statement of your distribution by states of your sales in the period from October 1, '53, to January 31, 1955?

A. Yes.

Mr. Rockwood: I would like to have marked for identification as Exhibit No. 31 a single page statement of the nature described by the witness.

Exam. Dishman: Exhibit 31.

(Defendant's Exhibit No. 31, Witness Jewett, was marked for identification.)

By Mr. Rockwood:

Q. Is this Exhibit 31 a statement showing your distribution by states?

A. Yes.

Q. I notice that you have 6.2 per cent of your sales in Colorado. Is there any community there in which you market heavily?

A. Denver.

Q. And in Minnesota, 28.10 per cent, is there any community there that predominates?

A. Well, there's several in Minnesota—Minneapolis, Deer River, they're probably the two.

Q. And the next line shows 18.19 per cent to Missouri. Is there any community there where your sales—

A. It's Kansas City.

[fol. 2033] Q. —center?

A. Kansas City.

Q. And is this statement that goes back to October 1, 1953, that covers about 15 months, is that fairly representative of the distribution as it has been during the past few years?

A. Well, it's representative of this company's business.

Q. I mean of your business.

A. Yes.

Q. I show you an exhibit which has been received in evidence here as Exhibit No. 28, that was introduced by Mr. Ehlen. Have you seen a copy of that map prior to today? Was a copy of that map shown you by Mr. Ehlen?

A. Yes.

Q. Do you make any sales in the territory along the Milwaukee at points which are colored blue on that map there, west of there to Spokane?

A. We have sold a few cars in South Dakota. I can't see these points, and I wouldn't remember, but, outside of a very few cars in South Dakota, we haven't sold any lumber west of there to Spokane. Does that answer your question?

Q. Yes. On cars originating on the SP&S, including the Oregon Electric and Oregon Trunk, what route do you normally use for your shipments eastbound from Spokane?

A. Originating on the SP&S?

Q. On the SP&S.

[fol. 2034] A. We generally route SP&S, GN, or SP&S, NP.

Q. Through what junctions?

A. Primarily to Minnesota.

Q. Minnesota Transfer?

A. No, not Minnesota Transfer.

Q. Well, you have some—

A. We have shipped some to the transfer.

Q. Well, there are some that go through to points east, to New York. Do they go through Minnesota Transfer, Minneapolis and St. Paul?

A. Oh, yes, we route that way.

Q. Do you route any through use of the Burlington?

A. Yes.

Q. What western junction?

A. We route over the Burlington.

Q. What western junction do you use for the Burlington?

A. Laurel, Montana.

Q. On shipments originating on the Southern Pacific or Union Pacific in Oregon, what are the routes that you customarily use?

A. Well, we're using Union Pacific where we can, originating on the Union Pacific, and, if the points—to certain points in Wisconsin, we route through on the Milwaukee at Marengo, I think it is.

Q. You use the Union Pacific Marengo route?

A. Oh, yes.

[fol. 2035] Q. To Milwaukee local territory?

A. Yes.

Q. Do you route Union Pacific, Council Bluffs or Omaha?

A. We use that routing for cars that we're sure will go beyond that point.

Q. Do you customarily use all of these routes that you have described from points on the SP&S, including the Oregon Trunk, Oregon Electric, and Union Pacific and Southern Pacific? Do you customarily use all of them?

A. All of the routes.

Q. You say that that map, Exhibit 28, was shown to you and which has been explained to you. Are you generally familiar with the routes now available from SP&S origin points to local points on the Milwaukee as shown on that map?

A. Generally, yes. I don't pretend to be a rate expert.

Q. You don't want to be cross examined on the map?

A. I don't believe so.

Q. It has been pointed out by Mr. Ehlen and it has been discussed here frequently throughout the case that those rates do not apply from points on the Santiam Branch to local Milwaukee points anywhere. Have you ever been embarrassed or run into difficulties because of the lack of the rates from the Santiam Branch?

A. No.

Q. If those Santiam rates were made applicable to [fol. 2036] Milwaukee points east of Spokane, I take it that that would not in any way damage your business or be to your disadvantage? You would have no objection to those rates being so published?

A. No objection.

Q. Do you think that it would be of any advantage to you to have the rates so made from the Santiam?

A. I rather doubt it.

Q. Does your company engage in the practice of stopping or putting on a partially loaded car and stopping at some intermediate point to complete loading? Do you do that?

A. Yes, we do some of that.

Q. Have you ever stopped a car at St. Maries on the Milwaukee?

A. We stopped one car at St. Maries.

Q. And did—

A. You mean at St. Maries, Idaho?

Q. Yes.

A. Yes.

Q. Do you recall what the origin of that car was?

A. I believe it originated on the Milwaukee point. I could give you the history of that one car if you want to take it.

Q. All right, you go ahead and give it to us.

A. It was a car we bought, and it was caught in a strike.

Q. Last summer?

A. Last summer, and it was originated on the Milwaukee. It was to be finished loading at a point on the Great [fol. 2037] Northern and then come back to the Milwaukee. It got into the mill during the strike, and they couldn't load it. So, it had to be pulled out, and we stopped the car at St. Maries and put in something similar to get rid of it.

It cost us a lot of money; we never got any of it back from any of the railroads.

Q. Except for that, you never had occasion to stop cars at St. Maries?

A. No; that's the only time.

Q. And you, as I understand it, are primarily in the pine business?

A. That's right.

Q. Do you have occasion to bill cars to one destination for partial unloading and then to be moved on to an ultimate destination for completion of unloading?

A. Oh, yes.

Q. In what territory do you do that kind of business?

A. Well, primarily east of blanket rate territory, east of Chicago, but always we've done it in Illinois, for instance.

Q. Do you engage in the practice to unload cars partially in one rate territory and carry it on to another rate territory?

A. No, sir.

Q. Have you ever had any experience in having any of your cars rejected and found the necessity for the diversion of that car to a second destination?

[fol. 2038] A. No, sir.

Q. Would the addition of the route as now requested by the Milwaukee in these proceedings be of any advantage to your company in the marketing of your products?

A. No.

Q. Are the present routes adequate to enable you to dispose of all the lumber you have to sell?

A. Yes.

Q. Would the Milwaukee—that is, movement over the Milwaukee assist in any problem connected with stops to complete loading or stops for partial unloading, or disposition of cars which the customer at destination may not want to receive? Would that help that situation, any of those situations?

A. No.

Q. What has been your experience with respect to supply of cars at mills supplied by the SP&S?

A. Overall, we haven't had—during car shortages, the SP&S has taken pretty good care of our mill's wants. There has been some shortages on the SP&S.

Q. Has the situation on the SP&S ever been any worse in a given time than the situation on other carriers in the Northwest?

A. No.

Q. The situation of the SP&S in those periods, has it been as good or better than the situation on other roads with which you do business?

[fol. 2039] A. I think it's been better.

Mr. Rockwood: You may cross examine.

Cross examination.

By Mr. Maguire:

Q. Mr. Jewett, what harm would these rates, which the Milwaukee is seeking, do your business?

A. None that I can see.

Q. Are you opposed personally from the point of your business to these rates being allowed by the Commission?

Mr. Rockwood: Just a minute. I object to that as an argumentative question.

Mr. Maguire: It's not argumentative at all. I'm just asking this witness his position on it.

Mr. Rockwood: This witness is here to state facts. He's told the facts as to whether his present routes are adequate, and he's told us the facts as to whether he would be injured.

Exam. Dishman: You said that, if the complaint prevails, you would not be harmed. Is that what you said?

The Witness: Yes, I said that.

Exam. Dishman: I assume then that you're not opposed?

The Witness: I'm not opposed.

By Mr. Maguire:

Q. Now, as to this completion of loading, where do you usually have your cars—the loading of your cars completed? At what mills and on what railroads? Let me first ask you: On what railroads are the mills located?

A. We have had completions made of cars on the SP&S, [fol. 2040] on the Union Pacific, on the Great Northern, and I believe on the Milwaukee.

Q. Now, this car that you had the distressing experience with at St. Maries, I think you stated that was during the lumber strike, and you had a part load and you were intending to have your loading completed on the Great Northern.

Did the car arrive at the completion of loading stop, and then you found you couldn't get the lumber? Was that it?

A. Yes, the car was in the yard of the mill. I can't recall the name of the mill.

Q. Do you object to telling what point that was?

A. I can't tell you that without looking.

Q. Did it involve, however, a combination of local rates that made it bad for you?

A. No, there was no combination of local rates. After the car was half loaded, it was on demurrage. We had to get it somewhere.

Q. Oh, I see. That's where you had the unfortunate experience. Paying demurrage while you were looking around for a mill to complete loading?

A. [redacted]

Q. I don't quite get where your distress came in then.

A. The distress came because we didn't know how long the strike was going to last. It was only as a last resort that we took the car out and loaded it at St. Maries.

[fol. 2041] Q. Then you completed loading at St. Maries?

A. We completed loading at St. Maries.

Q. But you left the car for a while at the mill on the Great Northern, hoping that the strike would be over?

A. That the strike would end, yes.

Q. So, where you got in trouble on the thing was waiting too long before you finally gave up on that idea, is that it?

A. Well, the demurrage was expensive.

Q. Yes. Now, did you ever make any stops to complete loading on the Union Pacific, on a car originating on the Union Pacific, and routed Union Pacific to Marengo and thence Milwaukee?

A. No, I never have used it.

Mr. Maguire: I think that's all. Thank you.

Exam. Dishman: Mr. Rockwood, I wonder if you want to offer this exhibit in evidence, Exhibit 31?

Mr. Rockwood: Yes, I offer in evidence Exhibit 31.
Mr. Maguire: No objection.
Exam. Dishman: Received.

(Defendant's Exhibit No. 31, Witness Jewett, was received in evidence.)

Exam. Dishman: Also, Mr. Rockwood, I don't believe you offered Mr. Ehlen's Exhibit No. 28.

Mr. Rockwood: Well, thank you for reminding me. Let me just offer them all then.

Exam. Dishman: I see only one.

[fol. 2042] Mr. Rockwood: Mr. Ehlen's Exhibit No. 28, and Mr. Veldman's Exhibits Nos. 29 and 30. Did I offer them?

Exam. Dishman: You offered Mr. Veldman's, and No. 28 is also received, so you're up to date now.

(Defendant's Exhibit No. 28, Witness Ehlen, was received in evidence.)

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Rockwood: I'll call Mr. Wall.

A. E. WALL was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you state your full name, please?
A. A. E. Wall.
Q. Where do you live?
A. Eugene, Oregon.
Q. Where is your place of business?
A. Junction City, Oregon.
Q. And with what company are you connected?
A. The Hult Lumber Company.
Q. H-u-l-t?
A. That's right.

Mr. Maguire: Pardon me. I didn't get that.
Mr. Rockwood: Hult—H-u-l-t.
The Witness: H-u-l-t.

[fol. 2043] By Mr. Rockwood:

Q. And the mill of Hult Lumber Company is at Junction City?
A. That's correct.
Q. By what railroad is it served?
A. Oregon Electric and Southern Pacific.

Exam. Dishman: Would you state your position with that company?
Mr. Rockwood: I forgot to ask that.

By Mr. Rockwood:

Q. What is your position with that company, Mr. Wall?
A. Sales Manager.
Q. And do you generally handle the matter of routing of cars?
A. I do.
Q. How long have you been in the business of production or sale or distribution of lumber in the Pacific Northwest?
A. About 25 years.
Q. Are you a member of any committee which considers the matter of lumber traffic of any association?
A. I am, yes.
Q. What committee is that?
A. The committee on traffic of the West Coast Lumbermen's Association.

Mr. Maguire: May I ask this: Is this witness appearing for the West Coast Lumbermen's Association, or on his own behalf?
Mr. Rockwood: No. I'm just showing he's an expert, [fol. 2044] Mr. Maguire. I'm showing his qualifications.
Mr. Maguire: Oh, I see.
Mr. Rockwood: No, he is not.

By Mr. Rockwood:

Q. What is the West Coast Lumbermen's Association?

A. Well, it's a group of lumber manufacturers who have formed an association to promote their common problems among the manufacturers, including rates and various things connected with the production and distribution of lumber.

Q. How long have you been on that committee?

A. Ten or 12 years.

Q. Does your company, the Hult Lumber Company, engage in the manufacture of lumber, or does it sell its own product, or does it sell the products manufactured by others?

A. The company manufactures and sells its own products.

Q. You do not wholesale?

A. No, we don't.

Q. Does your company have its own sales organization at points in the United States?

A. We sell through wholesale representatives, which we have throughout the country in different locations.

Mr. Maguire: I'm awfully sorry, Mr. Wall, I can't hear you. Would you just keep your voice a little higher?

Exam. Dishman: Will you repeat?

The Witness: We sell to wholesale representatives lo-
[fol. 2045] cated at various points throughout the country.

By Mr. Rockwood:

Q. Where are those wholesalers located generally with whom you do business?

A. What do you mean?

Q. In what parts of the country?

A. Southeast, southwest, central part, far east.

Q. You've heard the discussion—I think you've been in the room—of the distinction between firm cars and transit cars. Do you engage in—do you sell firm cars or transit cars, or a combination of both?

A. We sell firm cars only.

Q. You sell firm cars to wholesalers. Do you know whether any of those wholesalers, to whom you sell, engage in the transit business?

A. On our business, there could be an occasional car. However, we're not aware of it if there is.

Q. As far as you know, in your business there are no diversions in transit?

A. That's right.

Q. Approximately how many carloads are produced at Junction City in a year?

A. An average year would be between 800 and 900, I would say.

Q. What is the general description of your product, including a statement of the percentage of species, various species?

A. Our product is about 95 per cent Douglas fir and 5 per [fol. 2046] cent hemlock.

Q. Do you sell any cedar?

A. Very little.

Q. Do you have a dry kiln?

A. Yes, we do.

Q. Do you sell dry lumber from your dry kiln?

A. That's right.

Q. Do you sell any green lumber?

A. Some.

Q. Did you in compliance with a request of mine furnish me a statement showing distribution of your products by states in the years 1953 and 1954?

A. Yes, I did.

Mr. Rockwood: I ask that there be marked for identification as Exhibit No. 32 a statement characterized as the witness described it.

Exam. Dishman: It will be so marked.

(Defendant's Exhibit No. 32, Witness Wall, was marked for identification.)

By Mr. Rockwood:

Q. Is this Exhibit 32, Mr. Wall, a statement showing your distribution of products by states in the years 1953 and 1954?

A. Yes, it is.

Q. Glancing down through this, it appears that the states where you made your heavier sales were Illinois, Indiana,

[fol. 2047] Iowa, Kansas, Michigan, Missouri, Nebraska, some considerable sales down into Oklahoma and Texas.

Is it fair to say that those states that I named are and usually are the states where you have the largest distribution of your product?

A. That's correct, yes.

Q. Were you shown by Mr. Ehlen prior to coming to Portland a copy of this map, which has now been identified as Exhibit No. 28?

A. Yes, I've seen that.

Q. Have you familiarized yourself with the material shown on that map?

A. Yes.

Q. What business, if any, do you do at Milwaukee points shown on that map in blue, and west of those points out to Spokane? What business do you do in that territory at Milwaukee points?

A. You mean in volume, or what?

Q. Yes, that is, to Milwaukee points.

A. Well, we do some, but, as to just how much, I'm not prepared to say as to just what specific Milwaukee points we ship to, but we have shipped to Milwaukee points in that blue area.

Q. I notice that in the entire year of 1953 you shipped only two cars into the state of South Dakota, and in the year 1954 you shipped zero cars into the State of South Dakota. Montana was a little higher, 13 and 10. Now, were [fol. 2048] those Montana points Milwaukee points, or were they Great Northern or Northern Pacific points? Do you recall?

A. I believe they were some Milwaukee points, but primarily Great Northern points.

Q. At the present time, you say you are served by the Southern Pacific?

A. Yes.

Q. Do you have a route Southern Pacific, Union Pacific, Marengo, Milwaukee?

A. Yes, we do.

Q. Would shipments to Milwaukee points in Montana move over that route?

A. We usually do that, yes.

Q. You are also aware of the fact that, as shown on this map, there is a route SP&S, Spokane, Milwaukee to points east of Mobridge. You are aware of that?

A. Yes, we have shipped that way too.

Q. And you're familiar with the routes of the northern lines to the Minnesota Transfer?

A. That's right.

Q. Do you use that also?

A. We do.

Q. What about the use of—what routes do you use, other than those and with the SP&S?

A. Southern Pacific, Union Pacific via Council Bluffs and [fol. 2049] Kansas City, or D&RG.

Q. Do you use the Santa Fe at all—Southern Pacific, Santa Fe?

A. Oh, out of Pueblo sometimes, yes.

Q. Do you use all of these routes that have been referred to? Do you use them at one time or another?

A. Probably so, yes.

Q. Does your company do any business in starting out cars partly loaded to compete loading at some point and then move on to destination? Do you do that business?

A. A little; not much.

Q. Where you have done it, what is the occasion for doing it, and with what products generally have you completed the loading?

A. Oh, usually some pine lumber. One of our customers wants some pine lumber, and we would stop the car and pick up the pine, occasionally some white pine.

Q. In the pine lumber, have you ever had any trouble under the existing rate structure of finding sources for pine lumber to complete loading?

A. No, we haven't.

Q. Where do you complete loading in the pine belt?

A. Oh, up on the Union Pacific in the eastern part of the state of Oregon, and Medford, Klamath Falls, the southern part of the state.

Q. Have you ever completed loading along the Great Northern and Northern Pacific?

[fol. 2050] A. I believe we did at Coeur d'Alène one time.

Q. When it's plywood, is that completed east or west of the Cascade Mountains?

A. West.

Q. That's Douglas fir plywood?

A. That's right.

Q. And there's no production of Douglas fir plywood east of the mountains, is there?

A. I don't know of any.

Q. Do you recall what locations you have used to complete loading?

A. Eugene, Oregon, primarily.

Q. Which is also on the Southern Pacific and on the SP&S?

A. That's right.

Q. Do you start a car at Junction City to complete loading with plywood at Eugene?

A. Yes.

Q. And move it then to Portland on the SP&S?

A. Yes, that's right.

Q. And you can also start it out of there Southern Pacific, move south to Eugene, and complete loading, and keep it on moving over the Southern Pacific?

A. That's right.

Q. Did you ever have any trouble finding spots to stop to complete loading on plywood?

[fol. 2051] A. No, we haven't.

Q. Have you ever indulged in the practice of starting cars out for partial unloading at one point and complete unloading at another point?

A. Yes, we do.

Q. Where has that occurred, that you recall?

A. Mostly in Illinois, Indiana, Kentucky, east of there.

Q. And do you indulge in the practice to stop a car in a territory at one rate level, to complete unloading in a territory of a higher rate level?

A. No, we don't.

Q. Why don't you do that?

A. Usually the customer at the short point doesn't want to pay the high rate for the stop.

Q. So that you have indulged only at points in the same rate territory?

A. Two points that have the same rate, yes.

Q. Does that usually involve points geographically rather close together?

A. Quite often, yes.

Q. Have you ever stopped a car, we'll say, in Indiana, and then taken it on to New York state to complete unloading?

A. No, we've never done that.

Q. What has been your experience in the matter of rejected cars?

A. Well, I can't remember that we've had any.

[fol. 2052] Q. Have you ever had any cars where a dispute or some controversy arose between you and the customer as to whether the customer owed for the full car or the full amount that you billed him? Ever have any case like that?

A. No, we haven't. We've had an occasion of shortage, yes.

Q. But no claims of any nature which required diversion to another point?

A. No, we've not had them.

Q. Would this addition of this route as now requested by the Milwaukee be of any advantage to your company in assisting you in marketing your product?

A. No, it wouldn't be of any advantage to us.

Q. Are the present routes that you have available entirely adequate to enable you to dispose of all your lumber?

A. Yes.

Q. Where you want to dispose of it?

A. Yes, they are.

Q. At through rates and through routes?

A. Yes.

Q. Would the addition of a through route in any way assist you in any problem which you might have in connection with stops to complete loading, or stops for partial unloading, or for the adjustment of any claims that you may have from your customers with respect to the contents of the car?

A. No. We can't see that they would.

[fol. 2053] Q. What has been your experience with respect to car supply at your mill on orders placed with the Oregon Electric for cars?

A. Its been very good, our experience.

Q. Have you ever had any car shortage of any consequence on the Oregon Electric?

A. Not of any consequence.

Q. There have been times when you put in an order and there has been some delay in filling it?

A. Oh, yes, occasionally short delays.

Q. When there have been occasions—you said short delays. Has that been in a period when there was a general car shortage in the area?

A. Usually, but not always.

Q. Those short delays are for particular types of cars you order?

A. Sometimes.

Mr. Maguire: You're not leading the witness, are you, Mr. Rockwood?

Mr. Rockwood: Not a bit.

Mr. Maguire: That's what I thought.

Mr. Rockwood: I will if you wish.

Mr. Maguire: Not any stronger.

Mr. Rockwood: You may cross examine.

Exam. Dishman: Do you want to offer the exhibit in evidence?

OFFER IN EVIDENCE

Mr. Rockwood: Yes, I offer Exhibit No. 32 in evidence.

Exam. Dishman: Received.

[fol. 2054] (Defendant's Exhibit No. 32, Witness Wall, was received in evidence.)

Mr. Maguire: I might observe that Mr. Rockwood's definition of a leading question was one that could be answered "Yes" or "No", and I've heard nothing but "Yes" or "No" from this witness for some time.

Cross examination.

By Mr. Maguire:

Q. Mr. Wall, if you would look at Exhibit No. 32—that's this—

A. This map?

Q. No. That's this statement showing the geographical distribution of your output. Could you give me any idea for the year of 1953, when you shipped a total of 857 cars, about what proportion of that number were originated and shipped out over the Oregon Electric?

A. Approximately 50 per cent.

Q. And is that about your usual proportion? Fifty per cent Oregon Electric, and 50 per cent Southern Pacific?

A. Approximately that, yes.

Q. And Mr. Rockwood was asking you to draw some conclusion at one point as to the heaviest—the state in which your heaviest business was done. I suppose these figures, however—I noticed that he omitted some of them—I suppose these figures would be the best indication of where your heaviest volume of business is done?

[fol. 2055] A. That's right.

Q. Regardless of what he asked you about, that would be the best testimony, this exhibit?

A. Yes.

Mr. Rockwood: So stipulated.

By Mr. Maguire:

Q. Now, you say you would not think of part unloading a car in, let us say, eastern Indiana and letting the remainder of the car go to New York?

A. No.

Q. Why not?

A. I didn't say that.

Q. Well, would you?

A. If the customer wanted to, yes, because it's the same rate territory.

Q. I thought that was it. You just simply said you hadn't been asked to do it?

A. I said we hadn't done it.

Q. You have said that the proposed rates and necessary routes, which are at issue in this complaint case, would not solve any of the problems of your individual business. In what way would the granting of the complaint hurt your business?

A. It wouldn't hurt it.

Q. In other words, your attitude is one of neutrality here?

A. You might call it that.

Mr. Maguire: That's all.

[fol. 2056] Exam. Dishman: Anything more, Mr. Rockwood?

Mr. Rockwood: No. That's all.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Rockwood: Mr. Examiner, we had a witness in the room, sort of a spare, but he did feel that he had to go, and he's not here now. We do not have a witness available. We've got in a telephone call, and we may have one we can reach, but I'm not sure.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

We will recess now until 9:30 tomorrow morning.

(Whereupon, at 4:45 p.m., an adjournment was taken until 9:30 a.m., Tuesday, February 22, 1955, at the same place.)

[fol. 2059]

Transcript of Proceedings—February 22, 1955

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Rockwood: I'll call Mr. Broughton.

H. J. Broughton was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you state your name for the record, Mr. Broughton?

A. H. J. Broughton.

Q. And where is your home?

A. Underwood, Washington.
Q. What is your business, Mr. Broughton?
A. Lumber manufacturer.
Q. What company?
A. Broughton Lumber Company.
Q. Is that a corporation or a partnership?
A. Partnership.
Q. And you are a partner in that firm?
A. I am.
Q. You say you're a lumber manufacturer. Where is your plant located?
A. It's in Hood, Washington.
Q. From what station do you bill your shipments?
A. Bingen.
Q. And you are served only by the SP&S Railway Company?
[fol. 2060] A. That's right.
Q. How long have you been in business with this company, Mr. Broughton?
A. Thirty-three years.
Q. And at all times, your plant has been in this location in Washington?
A. That's right.
Q. Do you do any business other than the manufacture of lumber and the selling of your own product?
A. No.
Q. You do not sell the product of any other manufacturers? In other words, you do no wholesaling business?
A. No.
Q. What is the method which your firm uses in the making of sales?
A. Well, we sell through wholesalers and representatives in the east.
Q. Do you make some direct sales to customers?
A. Yes.
Q. Do you deal through wholesalers on the west coast?
A. Sometimes.
Q. But principally through wholesalers in the east?
A. Right.
Q. There has been discussion here in the record on what we call transit cars and on what are called firm cars. Are

[fol. 2061] you familiar with those terms in the lumber trade?

A. Yes.

Q. What is the character of your business?

A. All direct sales; no transits.

Q. All firm sales?

A. Right.

Q. You handle no transit business at all?

A. That's right.

Q. What is the approximate volume of your lumber shipments from your mill per year?

A. Oh, around a thousand cars a year.

Q. And what are the species of lumber that you manufacture?

A. Mostly fir.

Q. Any other species?

A. Some hemlock.

Q. Do you have a dry kiln?

A. No.

Q. And your fir lumber is, for the most part, green lumber?

A. That's right.

Q. All green lumber?

A. No. We dry some.

Q. Air-dried?

A. That's right.

Q. In what area of the United States do you find your principal markets?

[fol. 2062] A. Mostly in Iowa and Illinois, some Colorado.

Q. Do you sell to any particular communities in Iowa or Illinois, or generally throughout the state?

A. Throughout the state.

Q. And the same in Colorado?

A. Yes.

Q. Do you sell heavily in any particular community?

A. Oh, heavily to Denver.

Q. Heavy to Denver. Those are the states of your principal markets. Where else do you market your lumber?

A. Oh, occasionally in other states, but mostly in those states.

Q. Do you do as much as 75 or 80 per cent of your output in those three states?

A. Easily.

Q. Mr. Ehlen was on the stand yesterday as a witness and offered an exhibit—presented an exhibit, which showed the existing rates from SP&S stations, which would include Bingen on the SP&S, to destinations on the Milwaukee east of Spokane. Have you seen a copy of that map?

A. Yes.

Q. And has it been explained to you?

A. Yes.

Q. So that you are generally at least familiar with the present rate structure on lumber from SP&S points to points on the Milwaukee back in the middle west?

[fol. 2063] A. That's right.

Q. Referring to that map, will you tell us the extent of your sales in the states of North Dakota, South Dakota, and west thereof?

A. Very limited.

Q. Do you make any sales to Milwaukee local stations shown there in blue on that exhibit?

A. We have occasionally.

Q. And west thereof?

A. We have occasionally.

Q. To Milwaukee local stations?

A. That's right.

Q. Have you shipped from Bingen to Milwaukee local stations on the Milwaukee Railroad?

A. That's right.

Q. But your volume is very small, as you said?

A. That's right.

Q. What is the principal—what are the principal routes which you use in the shipment of your lumber out of Bingen?

A. SP&S, Spokane, CB&Q to transfer.

Q. CB&Q, the Burlington, doesn't reach Spokane. What is the line out of there?

A. Well, NP or GN, either one.

Q. I thought you misspoke. How do you ship to Denver?

A. We go by way of Laurel.

[fol. 2064] Q. Using the SP&S and one of the northern lines to Laurel?

A. SP&S, UP.

Q. Over what route is it handled when you use UP, the Union Pacific? Do you remember the junction?

A. I think it's Laurel—Laurel, Montana, I think.

Q. Silver Bow?

A. Silver Bow—maybe it's Silver Bow.

Mr. Maguire: Just a moment. Are you suggesting to the witness?

Mr. Rockwood: Yes indeed, directly.

Mr. Maguire: I thought you were.

By Mr. Rockwood:

Q. Laurel is not a station on the Union Pacific?

Mr. Maguire: It's all right for you to lead, I understand.

Mr. Rockwood: Unless I'm stopped. Do you object?

Mr. Maguire: No, I'm not objecting to that. It's obviously leading, but go ahead.

Mr. Rockwood: That's right.

By Mr. Rockwood:

Q. Do you customarily use all these routes which you've described? That is, the northern lines via Spokane, Minnesota Transfer; the northern lines to Laurel, thence the Burlington; and the northern lines to junction with the Union Pacific, and thence Union Pacific?

A. I usually favor the Union Pacific into Denver.

Q. What?

[fol. 2065] A. I usually favor the Union Pacific into Denver.

Q. But you use all routes?

A. Oh, yes; all, sure.

Q. Do you engage at all in your business in the practice of starting out cars partially loaded to complete loading at another point?

A. Very rarely.

Q. Do you engage in the practice of billing a car to one destination for part unloading, to have unloading completed at another destination?

A. No.

Q. What has been your experience, Mr. Broughton, in the matter of rejections by your customers of cars which are shipped to them?

A. Well, I've been in business 33 years and never had a car rejected yet.

Q. Have you ever had the necessity for diverting a car from the original billed destination to another destination because of any defect in the material or shortage of material in the car, or for any other reason?

A. No.

Mr. Maguire: Well, I—oh, that's all right.

By Mr. Rockwood:

Q. You have been advised, I take it, as to what the Milwaukee asks in this case with respect to joint rates with the SP&S via Spokane, thence Milwaukee?

[fol. 2066] A. Yes.

Q. Would the addition of that route—you're advised also that the Milwaukee seeks to have rates via that route to apply to Milwaukee connections, as well as to local points on the Milwaukee? You're aware of that?

A. Yes.

Q. Would the addition of that route, which the Milwaukee seeks in this case, be of any assistance to your company in the marketing of the lumber which you produce on the SP&S at Hood?

A. I can't see it would.

Q. Are the present routes available to you for marketing your lumber in all respects adequate to enable you to market your lumber?

A. They always have been.

Q. What has been your experience on the SP&S with respect to the ability of the SP&S to furnish cars for loading when you need them?

A. My experience has been very good.

Q. Have you had any shortage on the SP&S in the last couple of years?

A. Not material.

Mr. Maguire: Off the record?

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

[fol. 2067] By Mr. Rockwood:

Q. In the lumber industry generally in the Northwest, in the states of Oregon and Washington, have there been periods of car shortage of which you are aware?

A. Oh, yes.

Q. Has the SP&S ever had a car shortage so that it could not furnish cars to you when you wanted them at a time other than when there was a general car shortage in the area?

A. No.

Q. Do you ever make any shipments originating on the Union Pacific on the south bank of the Columbia River?

A. No, we don't.

Q. Do you have a spur track of the SP&S right to your mill, and you load right at the mill, is that correct?

A. That's right.

Mr. Rockwood: You may cross examine.

Cross examination.

By Mr. Maguire:

Q. When you say, Mr. Broughton, that you have very limited sales in the Dakotas and west, does that mean that your sales in Montana, for example, are insignificant in amount?

A. That's right.

Q. And are they also insignificant in amount in the Dakotas?

A. That's right.

Q. And the pattern of your marketing has been adapted over the years to the rates and routes that were available to you, has it not?

[fol. 2068] A. That's right.

Q. So, your business runs along according to a certain design?

A. That's right.

Q. Based upon the rates which have existed over a number of years past, is that it?

A. Yes.

Q. I was rather interested in your comments upon the car shortage situations which have existed in the past. What other railroad supplies you with cars than the SP&S?

A. I'm on the SP&S. They're the only ones can supply me.

Q. Yes. Do you have any other business establishment upon any other railroad which supplies you with cars?

A. No.

Q. And then your comparison with the SP&S and other railroads in general in the Northwest, so far as car shortage is concerned, upon what do you base that comparison?

Mr. Rockwood: Excuse me, Mr. Maguire. He made no comparison with other railroads.

Mr. Maguire: He said the SP&S was no worse in times of car shortage than other railroads generally in the Northwest.

Mr. Rockwood: I don't recall that he said that.

By Mr. Maguire:

Q. Was that your statement, Mr. Broughton?

A. Well, I'll make another statement. Many, many times we'll have cars over on the SP&S when the Union Pacific and the SP and the other railroads do not have cars.

[fol. 2069] Q. Do you know that of your own knowledge?

A. I do.

Q. Or is it just hearsay?

A. I do.

Q. Well, I guess you do know what you're talking about on that then.

A. Well, I think I should.

Q. I think you should too. Well, now, you say that these proposed rates would not be of any assistance to the conduct of your business. Would the proposed rates harm your business in any way?

A. I can't see that they would harm nor help me.

Q. And, therefore, as I get it, you are not appearing here in opposition to these rates?

A. The only thing I think about them, I think the origi-

nating line should have the traffic, and I'll adhere to that always.

Q. The originating line is the SP&S?

A. Right.

Q. Are you familiar with the fact that the SP&S will get its full haul up to the end of its line at Spokane?

A. All right, but it's jointly owned by the GN and NP.

Q. Now, where did you get that suggestion?

A. I never got it. I've always known it.

Q. So that your idea is, since the GN and NP are stockholders in the SP&S, that they should be given the long haul?

[fol. 2070] A. That's right, and they'll get it, as far as I'm concerned.

Q. Fine. Now, I gather from your statement about the pattern of your business that you rarely sell to wholesalers who would in turn start any of your cars out as transit cars, is that a fact?

A. That's right.

Q. And the wholesalers in the east are people who make firm contracts for delivery?

A. Direct sales.

Q. And then you deal through them, is that correct?

A. That's right.

Q. Do these wholesalers buy the cars from you, or do they sell on commission for you, or how is that done?

A. They buy it from the mill. It's some commission too.

Q. But do they designate the customer to whom you shall ship the car?

A. Yes.

Q. And so it is billed right from your mill direct to the wholesaler's customer?

A. That's right.

Mr. Maguire: That's all. Thank you, Mr. Broughton.

Mr. Rockwood: That's all. Thank you.

Exam. Dishman: Witness is excused.

(Witness excused.)

Mr. Rockwood: I'll call Mr. Strickfaden.

[fol. 2071] JACK M. STRICKFADEN was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you please state your name, Mr. Strickfaden, for the Reporter?

A. Jack M. Strickfaden.

Q. Spell it, please.

A. S-t-r-i-c-k-f-a-d-e-n.

Q. And where do you live, Mr. Strickfaden?

A. Salem, Oregon.

Mr. Maguire: I'm sorry, I didn't hear that.

The Witness: Salem, Oregon.

By Mr. Rockwood:

Q. In what business are you engaged?

A. Lumber manufacturing.

Q. And with what company?

A. Capitol Lumber Company.

Q. Speak up a little.

A. Capitol Lumber Company.

Q. Is that a corporation or a partnership?

A. A partnership.

Q. Are you a partner?

A. Yes, sir.

Q. And what is your responsibility with that company?

A. I'm the Manager of the company.

Q. And where is their mill located?

[fol. 2072] A. Salem, Oregon.

Q. And by what railroad is it served?

A. SP&S.

Q. That is, the Oregon Electric?

A. Oregon Electric, yes.

Mr. Maguire: I'm not as fussy about leading questions as you are.

By Mr. Rockwood:

Q. Do you have available to your mill at Salem the Southern Pacific, which also serves Salem?

A. Yes, we do.

Q. Do you have to pay a switching charge to the Southern Pacific on shipments that move via the Southern Pacific?

A. No, we don't.

Q. How long have you been in the lumber business, Mr. Strickfaden?

A. Approximately 15 years.

Q. I want you to describe the business of your company, that is, whether it's a manufacturer or a wholesaler, or a combination of both.

A. We're strictly manufacturers of green fir lumber.

Q. What are the methods which you use for the sales of your lumber?

A. Well, we sell to wholesalers and some direct sales to yards.

Q. Are those west coast wholesalers or eastern wholesalers?

A. Primarily west coast wholesalers.

[fol. 2073] Q. You have heard—there was a little discussion this morning about the distinction between firm sales and transit sales. Are you familiar with the distinction between those two types of sales?

A. Yes, sir.

Q. In your own business, which one do you use? Firm sales or transit sales, or a combination of both?

A. We never use transit sales—always a firm sale.

Q. Approximately how many cars are shipped by rail from your mill per year?

A. Oh, I would say around 300.

Q. In addition to that, do you have any output from your mill which is disposed of other than by rail shipments?

A. Oh, yes. We sell quite extensively locally, supply a number of retail yards at Salem.

Q. In the Willamette Valley?

A. Mainly in the Salem area.

Q. Could you give a general description of the product that you manufacture and sell?

A. Well, it's mainly green fir dimension lumber.

Q. Do you have a planing mill?

A. Yes, sir.

Q. Do you manufacture any species other than Douglas fir?

A. Hemlock occasionally.

Q. Is your hemlock production any major part of your [fol. 2074] total production?

A. No, it isn't.

Q. Are you able to describe for us the general limits of the territory in which you sell lumber?

A. Well, mainly Wisconsin, Iowa, Illinois, and some of your eastern states.

Q. And some of the eastern states?

A. Yes.

Q. Do you mean east of Chicago?

A. East of Chicago, yes.

Q. What percentage of your total shipments by rail go into the middle western states that you enumerated?

A. Probably right around 60 per cent.

Q. And that includes the three you enumerated. Would that 60 per cent include sales, we'll say, in—let me ask you: Do you make any sales in Missouri?

A. Very seldom; a few.

Q. The Dakotas?

A. Very seldom.

Q. Nebraska?

A. Occasionally, yes.

Q. And Kansas?

A. Occasionally.

Q. So that—did you include Minnesota in the list that you first gave?

[fol. 2075] A. Well, I don't know whether I included it. We do sell in Minnesota.

Q. Would the 60 per cent be substantially made up of sales in the four states, Illinois, Wisconsin, Minnesota and Iowa?

A. I believe so, yes, sir.

Q. And what percentage of your total output is shipped east of Chicago?

A. Roughly 40 per cent.

Q. And into what states east of Chicago does your lumber move?

A. Pennsylvania, New York mainly.

Q. Do you in the ordinary course of business keep a record or make a compilation of the destinations of your lumber by states of the United States?

A. No, we don't.

Q. Have you ever prepared a recent statement showing that for any recent period?

A. No, we've never had an occasion to.

Q. Have you seen before a copy of this map that is on the witness table before you, showing the SP&S System and the Milwaukee System east of Spokane with various colors on it?

A. Yes.

Q. That map has been explained to you?

A. Briefly, yes.

Q. Are you a rate expert or so qualified?

A. No, I wouldn't qualify.

[fol. 2076] Q. But the application, the present application of lumber rates from SP&S points, including the Oregon Electric, on which Salem is located, to this territory has been explained to you?

A. Yes, sir.

Q. Do you make any sales at points local to the Milwaukee at these local points which are shown in blue on this map? You can check the map, and you'll see that that begins near the western edge of Iowa and takes in some of southwestern Minnesota and then extends out into the Dakotas. Do you make sales in that area shown in blue on the map?

A. We have, yes.

Q. And are they a regular or a substantial portion of your sales going to that territory?

A. Yes, sir.

Q. Have you used the route of the Milwaukee from Salem to Spokane over the SP&S and thence the Milwaukee out of Spokane?

A. In times past, I believe we have, yes.

Q. On your business out of Salem, what is the route or routes most commonly used by you in the shipment of your lumber?

A. Well, to my knowledge, ordinarily it's the northern lines, GN and NP.

Q. Out of Spokane?

A. Out of Spokane, yes.

Q. To Minnesota Transfer?

A. Yes, sir.

[fol. 2077] Q. You say that you also have service over the Southern Pacific out of Salem?

A. Yes, sir.

Q. Do you use Southern Pacific routes out of the Salem area?

A. Very seldom.

Q. Are you able to give us an estimate of the division of your business between the northern lines' route that you have described and the Southern Pacific route out of Salem?

A. I don't imagine we ship over two per cent at the most on the southern lines, the SP.

Q. That would leave 98 per cent for the northern lines?

A. Yes, sir.

Q. That's a very good percentage. Does your company engage in the practice of starting a car out of Salem with a partial load for stopping at another point to complete loading?

A. No, sir.

Q. Did you ever stop cars to complete loading in the pine territory east of the Cascade Mountains?

A. No, we have not.

Q. Do you ever engage in the practice of billing a car out to a destination to stop and partially unload with the balance of the load to be carried to another destination?

A. That has happened; very seldom though.

Q. Have you ever engaged in that practice at any points west of Minnesota Transfer?

[fol. 2078] A. No, I don't believe so.

Q. What has been the experience of your company with respect to the rejection of a shipment by your customer when the car reaches destination?

A. Well, to my knowledge, we've never had a rejection on a car of lumber.

Q. Has it been explained to you what the Milwaukee wants in this case, that is, from the complaint, through

rates via Spokane from SP&S points east of Spokane via the Milwaukee to points on the Milwaukee and its connections east?

A. Yes.

Q. That's been explained to you?

A. Yes.

Q. Would the addition of that route of the Milwaukee be of any assistance to you in the marketing of your lumber for sale?

A. I don't see where it would, no.

Q. Are your present routes available via the northern lines and via the Southern Pacific adequate to enable you to dispose of all of your lumber without difficulty?

A. We've never had a selling problem on lumber.

Mr. Maguire: I couldn't hear that, I'm sorry.

The Witness: We have never had any trouble in selling our lumber.

By Mr. Rockwood:

Q. Have you ever had any trouble moving that lumber through joint rates over existing routes to your markets? [fol. 2079] A. No, sir.

Q. You are located, as you say, on the rails of the Oregon Electric and ship a major part of your lumber over the northern lines. From what railroad do you order your cars for movement of lumber out of Salem?

A. Oregon Electric and the SP occasionally.

Q. What has been your experience with respect to the ability of the Oregon Electric to supply you with cars when you wanted them?

A. It's been very good, very good.

Q. Are you able to make any comparison with—as to your experience with the Oregon Electric and your experience with the Southern Pacific?

A. Yes, I have.

Q. How have they compared?

A. Generally, we can always get a car from the Oregon Electric. In times past, during car shortage, we have had difficulty in getting an SP car.

Mr. Rockwood: You may cross examine.

Mr. Torinus: Mr. Examiner, I have one or two questions in the nature of direct.

Exam. Dishman: All right.

By Mr. Torinus:

Q. Mr. Strickfaden, are you familiar with the term "transit car"?

A. Yes, sir.

[fol. 2080] Q. Do you know whether or not transit cars are sometimes shipped from the Pacific Northwest over certain routes for the purpose of delaying the car in transit?

Mr. Maguire: Objected to as irrelevant.

Exam. Dishman: What is the purpose of the question, Mr. Torinus?

Mr. Torinus: Mr. Examiner, the purpose of the question of the witness is the same as the purpose of my questions asked of Mr. Veldman. There is testimony in the record, which I pointed out yesterday, by the Witness Titus for the Milwaukee, that he represented a number of wholesalers, that one of the reasons for his support of the Milwaukee's complaint was that it would enable transit car operators, so-called, to consign cars to a convenient diversion point and then to divert cars to points beyond.

There was testimony by that witness that some of those shippers preferred delay. There has been testimony in the record as to the availability of Canton, South Dakota, as a diversion point off the main line of the Milwaukee, and there is testimony at this hearing by one of the witnesses, Mr. Alexander, that Canton was utilized.

I want to show from this witness whether or not the opening of this route and its utilization by transit car operators, who may utilize the route for the purpose of delaying cars in transit—I want to show the effect of that on his business.

[fol. 2081] Exam. Dishman: Well, the same ruling as yesterday. The witness may answer.

Mr. Torinus: Perhaps I should repeat the question.

Mr. Maguire: May it be understood, Mr. Examiner, however, that I don't accept Mr. Torinus' interpretation of Mr. Titus' testimony. On the contrary, I believe it's distorted.

Exam. Dishman: All right. Will you repeat the question?

By Mr. Torinus:

Q. Do you know whether or not transit cars are shipped over certain routes for the purpose of delaying the car in transit?

A. Yes, I'm aware of that.

Q. Now, Mr. Strickfaden, what effect, if any, would an additional route from SP&S origins, including origins on the Oregon Electric, to eastern transcontinental destinations via the Milwaukee Railroad, which would permit transit car operators to utilize a diversion point off the main line of the Milwaukee Railroad—what effect would such an additional route have on your business?

A. Well, my personal opinion is that it would increase speculation on these transit cars in the lumber business, which I don't think is a healthy situation for the industry as a whole. That is my personal opinion.

Q. Now, can you explain that, please, why you don't think it's a healthy situation?

A. Well, we have—

[fol. 2082] Mr. Maguire: Now, just a moment, please. I think we're getting so far away. We're now getting into a dissertation upon the method of marketing cars by sending them in transit, and I think that is so far removed from the issues that it should not be permitted.

Exam. Dishman: The witness referred to an unhealthy situation. He may explain what he meant.

The Witness: Maybe I should qualify it by saying "an unhealthy marketing situation on lumber".

Exam. Dishman: Is that your explanation?

The Witness: I was about to explain that further, if I may.

Mr. Maguire: Well, I still submit, Mr. Examiner, that this is a gentleman here who deals obviously in firm sales. Now, he may not be in sympathy with another very important and very active sector of the lumber industry, but I don't think this is the time nor the place to thresh out the relative merits of two different kinds of marketing.

Exam. Dishman: You don't deal in transit sales, you say? Wasn't that your testimony? That your business is confined to firm sales?

The Witness: That's right.

Exam. Dishman: Well, you—

Mr. Torinus: Mr. Examiner, might I be heard on this?

Exam. Dishman: Yes, but I wonder why you're questioning him about that if he doesn't deal in it. He doesn't deal [fol. 2083] in that type of sale.

Mr. Torinus: Well, he's in the lumber business. He sells, as he said, to buyers and to wholesalers, and his sales are firm.

Exam. Dishman: Yes.

Mr. Torinus: Now, there is testimony in this record about the utilization of these railroads by transit car operators. I'm simply asking him what the effect of an additional route by the Milwaukee, which by such operators would have on his business. I'm asking him the effect of—

Exam. Dishman: Well, does the witness know? Can you testify of your own knowledge what effect that would have?

Mr. Torinus: Well, he was about to explain, Mr. Examiner, when he was interrupted.

Exam. Dishman: Well, if you can testify without speculating on it, can you do it?

The Witness: I can only speak from past experience. At times when the quantity of transit cars were rolled into an area where we had been selling on firm business, it has had an effect on the market, that has dropped the price of lumber in that area. Now, to that extent, I do know.

Exam. Dishman: That's what you meant by an unhealthy situation?

The Witness: That's right.

Mr. Torinus: I should think he ought to be permitted to [fol. 2084] explain fully, Mr. Examiner.

Exam. Dishman: Well, I think he has. Isn't that what you meant by it?

The Witness: That's in essence what I mean by it.

Exam. Dishman: Well, doesn't it stop there?

Mr. Maguire: I submit he's answered the question.

Mr. Torinus: I don't understand that he did, Mr. Maguire.

Exam. Dishman: Well, I understood you to say that is what you meant.

The Witness: To that question, yes.

By Mr. Torinus:

Q. Now, Mr. Strickfaden, what effect does this practice have on the marketing of lumber during a period when the market is rising? Can you explain that, please?

Mr. Maguire: Now, just a moment, please. Mr. Examiner, we're getting into a dispute apparently on the principles of marketing, which has nothing whatever to do, regardless of routes, rates, or anything else.

Mr. Strickfaden's explanation was that a transit operator can come in and dump cars on the market, where he has firm sales, and depress the market price. Rates and routes have no effect on that at all. That's a practice of marketing lumber which has existed for years. He doesn't like it. He said he doesn't like it, and I think that ends the discussion so far as the merits of this case are concerned.

Mr. Torinus: Mr. Examiner, in this case, the Commis- [fol. 2085] sion is governed by the broadest public interest considerations under Section 15(3). The Commission may only order new through routes and joint rates when, after a full hearing, they are found necessary or desirable in the public interest.

Now, I don't think this witness should be shut off simply because he gives an answer which doesn't please Mr. Maguire.

Mr. Maguire: Oh, that isn't it, and you know it.

Exam. Dishman: If this witness has a grievance here of some sort or fears of some sort, he might be permitted to state just what they are.

Did you understand the last question?

The Witness: Yes, sir, I believe so.

Exam. Dishman: All right.

The Witness: I would like to have it restated.

Mr. Torinus: Will you read the question, please?

(Question read.)

The Witness: The effect it has had on our business with the market rising, at times it will add to the inflationary trend of the market in a certain area, and then as these cars roll into a market, where there is a high price offered for the material, it will tend to lower the market quicker than an ordinary supply and demand setup would, I think.

By Mr. Torinus:

Q. Now, how does that affect your industry and the mill industry generally in this area, Mr. Strickfaden?

A. Well, at times that will lead to cancellation of orders [fol. 2086] due to—

Q. Firm orders?

A. Firm orders.

Mr. Maguire: What was the answer to that? Mr. Torinus said "firm orders". What was your answer before that?

The Witness: I said at times that will lead to cancellation of firm orders.

Mr. Maguire: Thank you.

By Mr. Torinus:

Q. Does it have any other effect, Mr. Strickfaden?

A. Not that I can think of at the moment.

Mr. Torinus: You may cross examine, Mr. Maguire.

Cross examination.

By Mr. Maguire:

Q. You say this results—this flooding of the market by transit operators results in cancellation of firm orders?

A. Yes, sir, at times.

Q. Did I understand you to say that you never had a car rejected?

A. Never had a car that has been en route rejected, no.

Q. What you mean is that you have had cancellations, however?

A. We have had cancellations.

Q. Of firm orders before the car moved?

A. Yes, sir.

Q. Well, as I get it, your grievance against the transit operator really amounts to this, doesn't it, that, when you [fol. 2087] have an order to sell in a region of scarcity, so that you can hold your price up, then by reason of the elasticity of operation of a transit operator, he can come in there and restore a normal balance of supply and deprive

you of the higher price you would otherwise get? Isn't that your complaint?

A. No, sir, I didn't say that. We have customers in chain yards that we supply time after time with repeat orders with these cars.

Now, when transit operations are going on in that area, perhaps they will send us an order for yard stock, certain lengths, certain sizes. If the transit operator happens to have a car right in that area of that particular size and some contractor comes into that man and wants it in a hurry, he may send us a wire to cancel his order, and he'll buy it from that transit operator, which disturbs our setup in Oregon.

Q. Well, you say they add to inflation by lowering the prices, as I understood. How does that happen?

Mr. Torinus: Well, I'll object to your misstating the witness' statement.

Exam. Dishman: Well, let the witness' statement stand.

By Mr. Maguire:

Q. As I understand it, you said that in a rising market they will tend to inflate the rising prices. Did I quote you correctly there?

A. I believe so.

Q. Yes, and then you said they will lower the market [fol. 2088] quicker than the ordinary supply and demand would.

A. I probably misstated that. What I meant by that was: In an area, such as I spoke of, transit cars roll in in such a quantity that it floods the market. Then the price drops quicker than it ordinarily would in that area.

Q. Well, then, they do not inflate. There's no inflation there except an increase in supply, if that be called inflation, is that it?

A. That's right. It would be a reverse trend.

Q. Yes. In other words, what they do, they can probably —the public can probably get lumber at a lower price than if they had to rely on you alone, isn't that it?

A. Well, at times it happens that way, and at other times it doesn't.

Q. Well, does a transit operator ever create a scarcity in your area of trade so that you can get a higher price?

A. Oh, I don't believe he does.

Q. Let's go back on your statistics here. You said first that you sell extensively to the retail yards in the Salem area, did you not?

A. Yes.

Q. Then in answer to Mr. Rockwood's questions, you stated that your main marketing area was in Wisconsin, and then Mr. Rockwood reminded you of Minnesota, Iowa and Illinois—60 per cent goes to that area, and 40 per cent east of Chicago. Now, are those percentages percentages of [fol. 2089] your total output?

A. No, sir. Those are percentages of rail shipments.

Q. Oh, I see, and that's of the 300 cars per year that you ship by rail?

A. That's right.

Q. Well, I just wanted to get that straightened out. Now, then, you also said that you make—you very seldom sell in Missouri, the Dakotas, or Nebraska?

A. That's correct.

Q. But then you also said that you sell—make substantial sales in the blue area marked on Exhibit 28. Now, the blue area on Exhibit 28 does include Nebraska and the Dakotas, does it not, as well as part of Iowa, western Iowa, northwestern Iowa, and western Minnesota?

A. I thought that I said we made an occasional sale in the Dakotas.

Q. Oh. Then you do not make substantial sales there?

A. Not substantial, no.

Q. That's all right then. When did you first find out about this Canton route of the Milwaukee?

Mr. Torinus: I'll object to that question. He didn't say anything about it.

Mr. Maguire: You asked him about it yourself. That's what all this dispute is about.

Exam. Dishman: Do you know anything about the Canton route?

[fol. 2090] The Witness: Very little. I'm no rate expert.

By Mr. Maguire:

Q. The Canton route is the route that Mr. Torinus referred to when he said it's a route that takes off of the main line of the Milwaukee.

Mr. Torinus: I didn't say anything about the Canton route as far as this witness was concerned.

Mr. Maguire: You asked about it, and that's what all this dispute was about.

Mr. Torinus: I didn't ask him a single question about it.

Exam. Dishman: Let the witness state what he knows about it. Do you know anything about the Canton route?

The Witness: I'm just aware of the fact that there is this route. It can be used over the Milwaukee to delay cars.

By Mr. Maguire:

Q. And was that the one that you were referring to when Mr. Torinus asked you about it a little while ago?

Mr. Torinus: I'll object to you misstating it.

Mr. Maguire: I'm not misstating that. I'll go back on the record on this to show that Mr. Torinus asked him about this, and that is why I interposed objection to his questioning him about it.

I'm surprised that you would deny that.

Mr. Torinus: The record will speak for itself, Mr. Maguire.

Exam. Dishman: Let's not delay here. Do you know any more about the Canton route?

The Witness: That's all I know about it.

[fol. 2091] By Mr. Maguire:

Q. Do you know anything about any other circuitous routes?

A. Very little.

Q. Do you know anything about the Northern Pacific's circuitous route down through Oaks?

A. Yes, we've used it.

Q. You have used it?

A. One time, yes.

Q. For a transit car?

A. No, sir.

Q. Was that a firm sale?

A. A firm sale.

Q. Do you know if the transit operators use the Northern Pacific route?

A. I'm aware of that, sir.

Q. Does their use of that route through Oaks harm your business?

A. I couldn't answer that. I don't know.

Q. Would the Milwaukee use of a circuitous route harm your business any more than the circuitous Northern Pacific route?

A. Probably not.

Q. So that you have—if there be any evil to it, you have that evil before you right now on the part of one of the northern lines in regard to the routing that they supply in their tariffs, isn't that true?

A. I couldn't answer that.

[fol. 2092] Q. Then we are to understand that you do not know and—you contradict me if I'm misinterpreting what you said—I don't want to misinterpret you—but you do not know whether a circuitous route via the Milwaukee would be of any more harm to you than the existence of a circuitous route via the Northern Pacific? Is that it?

A. It would depend upon—it seems to me it would depend on how much traffic would roll that way, how much transit business would be moved that way.

Q. So whatever harm would be done, it would occur only if the circuitous route of the Milwaukee were extensively used, is that what it would be?

A. In the transit business, yes.

Q. And, of course, you can't predict what that would be?

A. No, I can't.

Q. Do you know to what extent the circuitous route over the Northern Pacific is now used?

A. No, I do not.

Q. You don't know whether that hurts?

A. Well, I know that it hurts me in my own mind.

Q. It hurts your feelings, but does it actually—can you point or points in your business operations where it harms you?

A. Well, I can't answer that.

Q. Well, I gather from your comments on the transit operators, you don't like them much anyway from a business point of view?

[fol. 2093] A. From a business point of view, no.

Q. And so you don't want anything put in that's going to help the transit operator?

A. As far as I'm concerned, no.

Q. How long have there been transit operators in the lumber business?

A. I'm no authority on that.

Q. There have been transit operators going full blast ever since you've been in the lumber business for the past 15 years, haven't there?

A. Oh, yes, I imagine.

Mr. Maguire: That's all. Thank you.

Mr. Torinus: I have some questions in the nature of redirect.

Exam. Dishman: All right.

Mr. Rockwood: I have no redirect.

Redirect examination.

By Mr. Torinus:

Q. With respect to the question of inflation and deflation which Mr. Maguire questioned you about, do you know whether or not during the period when the market is rising, Mr. Strickfaden, some transit operators have a tendency to take cars off transit lists and hold them back?

A. I've heard of that practice.

Exam. Dishman: Do you know that?

Mr. Maguire: Do you know of your own knowledge?

[fol. 2094] The Witness: Well, I know of one operator that has done it, yes.

By Mr. Torinus:

Q. Now, Mr. Strickfaden, Mr. Maguire questioned you about certain existing tariff routes and the use of the proposed Milwaukee route. I take it—let me put it this way:

Would the addition of the Milwaukee route, if it were used to any extent for the purpose of delaying cars, assist your business, or what effect would it have on your business?

A. To me, it seems it would encourage the practice of transiting, which I personally don't believe is beneficial to my business as a producer of lumber.

Mr. Torinus: I have no further questions.

Recross examination.

By Mr. Maguire:

Q. And anything that helps the transit operator, you're against, is that it?

A. Yes, sir.

Mr. Maguire: Thank you.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Rockwood: I'll call Mr. Ness.

Peter Ness was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you please state your full name to the Reporter?

[fol. 2095] A. Peter Ness.

Q. N-e-s-s?

A. Yes.

Q. Where do you live, Mr. Ness?

A. Eugene, Oregon.

Q. What business are you engaged in?

A. Lumber manufacturing.

Q. With what company?

A. Kangfeldt Lumber Company.

Q. Would you spell that one for the Reporter?

A. K-a-n-g-f-e-l-d-t.

Q. Is that a corporation?

A. Partnership.

Q. Are you a partner of that firm?

A. Yes.

Q. In general, what are your responsibilities in the operation of the firm?

A. I'm superintendent of production.

Q. Are you generally manufacturers or wholesalers?

A. No wholesale.

Q. Where is the plant of Kangfeldt Lumber Company located?

A. Eugene.

Q. By what railroad is it served at Eugene?

A. The Oregon Electric.

Q. Do you have—are there arrangements at Eugene so [fol. 2096] that you can ship off the Oregon Electric via the Southern Pacific?

A. Yes.

Q. Do you pay a switching charge on movements via the Southern Pacific?

A. No.

Q. So, you have both the Oregon Electric and Southern Pacific available to you for service on the cars you originate?

A. Yes.

Q. How long have you been in the lumber industry in the Northwest?

A. Seven years.

Q. How long have you been with your present firm?

A. Four.

Q. Does your firm engage in any—you say you're a lumber manufacturing business. Do you engage in any business other than the manufacturing business? Do you wholesale lumber?

A. No, sir.

Q. Tell us a little bit more about the methods used by you in selling your output. To whom do you sell?

A. Northwest lumber brokers.

Q. Are those sales made to these wholesalers at the mill, or are they sold on commission after the wholesaler makes the sale?

A. They're firm prices to us.

Q. It's a firm sale to the wholesaler?

A. Yes.

[fol. 2097] Q. Do you know how your cars—you've heard the discussion of the difference between firm cars and transit cars?

A. Yes.

Q. Do you know how the cars move now, whether it's as firm cars or transit cars, or a combination of both?

A. We have a combination of both.

Q. Do you know—can you tell us approximately how your shipments are divided between sales which are made shipped firm by the wholesalers, and those that are shipped as transit cars by the wholesalers?

A. I'd say about 90 per cent firm.

Q. And 10 per cent transit?

A. Yes.

Q. About how many cars a year do you produce in your plant, Mr. Ness?

A. Between 5 and 6 hundred.

Q. What is the description of the product which you manufacture and sell?

A. Douglas fir, board dimension and timbers.

Q. Do you have a dry kiln?

A. No, sir.

Q. Is all yours shipped green?

A. They're all air-dried.

Q. Do you ship some species other than Douglas fir?

A. Yes, a very small percentage.

[fol. 2098] Q. What are those? What species?

A. White fir and hemlock, and a little cedar.

Q. Can you tell us in general the areas to which—the areas in the United States to which your cars move from the mill at Eugene?

A. The big share goes to the eastern seaboard and Michigan, some in Texas, and some in California.

Q. You don't do much business in the middle west?

A. No.

Q. The Wisconsin-Minnesota area and south thereof?

A. No.

Q. Would you say the eastern seaboard—well, you have said the eastern seaboard and Michigan. Are there any

other states between Chicago and the Atlantic seaboard, other than Michigan, in which your lumber moves?

A. We have sold some in Indiana, and I imagine we've sold some in other states too. I can't recall any offhand though.

Q. Do you receive information from your wholesalers in every case as to the ultimate destination of the cars on transit cars?

A. On transit cars, no.

Q. So that you could not make a complete statement from your records of the specific distribution of your sales by states?

A. No.

Q. Before you on the table is a map, which has been offered in evidence, presented by Mr. Ehlen of the SP&S, [fol. 2099] which illustrates the present effective rates on lumber from points on the SP&S, including the Oregon Electric in Eugene, to points on the Milwaukee east of Spokane.

Do you make any sales in this territory of the Milwaukee included in the stations shown in blue and west thereof to Spokane?

A. Not to my knowledge.

Q. What routes do you—in the first place, who specifies the route on the shipments as they leave your mill?

A. The wholesaler generally, but we can change that if we have to or if it's desired to.

Q. What routes do you presently use out of your plant at Eugene for the movement of your lumber?

A. Well, east it's OE, SP&S, GN or NP to Minnesota Transfer, and from there it varies considerably.

Q. For your California business, what route is used?

A. As much as we can, it goes OE, GN to Western Pacific, or I think—I'm not sure on this now—sometimes it's Santa Fe.

Q. GN to what point?

A. Bieber, I think.

Q. Bieber, California?

A. Yes.

Q. Out of Eugene, do you have occasion to use the Southern Pacific route?

A. Sometimes we have to.

[fol. 2100] Q. For business east of Chicago, do you use the Southern Pacific route in connection with the Union Pacific as much as you do the northern lines, Great Northern and Northern Pacific?

A. No. We never ship anything on the Southern Pacific going east.

Q. What business do you give the Southern Pacific Railroad?

A. Only to stations in California where we can't get the Western Pacific or the Santa Fe.

Q. Would you call yourself a rate expert?

A. No, sir.

Q. You are familiar with the routes now existing over the Milwaukee as this map has been explained to you before?

A. Yes.

Q. Except for that, you are not familiar with the Milwaukee routes or rates?

A. That's right.

Q. In the conduct of your business, do you engage in the practice of starting out a car partly loaded for stop to complete load at another station?

A. Sometimes we do.

Q. In what territory do you indulge in that practice?

A. In the Willamette Valley.

Q. Do you ever start a car out to complete loading at a point east of the Cascade Mountains?

A. No, sir.

[fol. 2101] Q. You complete loading in the Willamette Valley along what railroad?

A. Either one, OE or SP.

Q. Oregon Electric or Southern Pacific?

A. Yes.

Q. Do you engage in the practice of shipping out a car billed to a destination to stop for part unloading with directions to take to another destination for completion of unloading?

A. Once in a while.

Q. In what territory have you used that method?

A. It would be on the eastern seaboard, small towns in New York or Pennsylvania, New Jersey. I think we've had that happen in a lot of them.

Q. In these states—

A. Yes.

Q. —that you have just named?

A. Yes.

Q. Have you ever used that practice to stop at any point west of Minnesota Transfer?

A. Not that I know of.

Q. What has been the experience of your company in the matter of rejection of cars by the purchaser with the necessity of moving that car on to make a sale at another destination?

A. I never had it happen.

Q. The Milwaukee, as has been explained many times, has [fol. 2102] asked for these routes via Spokane and the Milwaukee, and the Milwaukee eastern connections, on the same basis as rates are now available via the Great Northern and Northern Pacific. Would the addition of that Milwaukee route be of any assistance to you in the marketing of your lumber?

A. No.

Q. Are the present routes available to you via the Great Northern and Northern Pacific, and for southern business via the Southern Pacific, entirely adequate to enable you to dispose of your lumber as you wish to?

A. Yes.

Q. From whom do you order your cars for loading at your mill in Eugene?

A. The Oregon Electric, and the SP when necessary.

Q. If the car is to move via the Oregon Electric, you'll order it from the Oregon Electric.

A. That's right.

Q. If a car is to move via the Southern Pacific, you would order it from the Southern Pacific?

A. Yes.

Q. What has been your experience at your mill at Eugene with respect to the ability of the Oregon Electric to supply cars for lumber loading out of your mill?

A. Very good experience, very happy situation.

Mr. Rockwood: You may cross examine.

[fol. 2103] Exam. Dishman: Any questions, Mr. Torinus?

Mr. Torinus: I have no questions.

Cross examination.

By Mr. Maguire:

Q. I just wanted to get one thing clear in my mind, Mr. Ness. Of the 5 or 6 hundred cars, is that your production per year?

A. Almost entirely. We ship once in a while by truck, only when we have to meet a boat loading here at Portland.

Q. I see, but this 5 or 6 hundred cars is all of your production that is shipped by rail?

A. Yes.

Q. And as I understand it, you do practically all of your sales to northwestern—north coast lumber brokers?

A. That's right.

Q. Do you make any sales of your own?

A. No, sir.

Q. And then as to the routing of shipments, as I understand it, the wholesaler specifies the route, but then you added that you can change the route under certain circumstances?

A. Yes.

Q. Under what circumstances do you change the route?

A. Sometimes the girls who make out the orders will say "SP" back east. All we have to do is call them and tell them to ship OE instead. We only ship SP when it's a point that can't be reached by the Oregon Electric.

[fol. 2104] Q. Oh, I see.

A. It makes no difference to the wholesaler actually.

Q. It is your policy to favor the Oregon Electric?

A. That's right.

Q. And its connections?

A. That's right.

Q. And the Northern Pacific and Great Northern Railroads?

A. That's right.

Q. Your mill site is leased from the Oregon Electric, isn't it?

A. That's right.

Q. Under the lease agreement, do you have either an express provision or a tacit understanding that you will give the Oregon Electric and the NP and GN preferred routing?

A. If it's in there, I haven't read it.

Q. But you do feel friendly to them so you do give them the preference?

A. Yes.

Q. So that the only change you make in the routing then is when someone makes a social blunder of routing via the Southern Pacific, is that it?

Mr. Rockwood: Just a minute. I think that's a little argumentative.

Mr. Maguire: Well, I will modify that. It was more than 90 per cent facetious anyway.

By Mr. Maguire:

Q. But it's only when they route Southern Pacific instead [fol. 2105] of Oregon Electric and its connections that you step in, is that it?

A. Yes.

Q. So that, really, the routing with that exception is entirely up to the person why buys the lumber?

A. That's right.

Q. So, when you say that the Milwaukee rates would add nothing to your picture, since the only time you step into the picture is to see that traffic moves over the Oregon Electric and the northern lines, we want to take those two statements together, don't we?

A. That's fine.

Mr. Maguire: That's all. Thank you.

Redirect examination.

By Mr. Rockwood:

Q. Do the northern lines give you all the service you need?

A. Yes, sir.

Mr. Rockwood: That's all.

Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: We'll take a short recess.

(Short recess taken.)

Exam. Dishman: The hearing will be resumed.

Mr. Rockwood: I'll call Mr. Larsen.

NORMAN LARSEN was sworn and testified as follows:

[fol. 2106] Direct examination.

By Mr. Rockwood:

Q. State your name for the Reporter.
A. Norman Larsen.
Q. What?
A. Norman Larsen.
Q. -s-e-n or -s-o-n?
A. -s-e-n.
Q. And where do you live, Mr. Larsen?
A. I live in Eugene, Oregon.
Q. In what business are you engaged?
A. Manufacturing lumber.
Q. With what company?
A. Larsen-Clark and Powell.
Q. Where is the mill of that company located?
A. Junction City, Oregon.
Q. Which is some 15 miles north of Eugene?
A. That's right.
Q. Is that a corporation or a partnership?
A. It's a partnership.
Q. Are you a partner in the firm?
A. Yes.
Q. What is your responsibility? What work do you handle in the firm?
A. Mine is sawmill and sales.
[fol. 2107] Q. What railroad serves your plant at Junction City?
A. The OE.
Q. The Oregon Electric. Does Southern Pacific also go through Junction City?
A. Yes, it does.

Q. Do you have service over the Southern Pacific?

A. No, we don't.

Q. Is there any interchange, so far as you know, between the Oregon Electric and the Southern Pacific at Junction City?

A. Not at Junction City.

Q. How long have you been in the business of the manufacture and distribution of forest products in the Northwest?

A. Fifteen years.

Q. Does your company do any business other than the manufacturing of lumber?

A. No, it doesn't.

Q. It does not engage in the sale of lumber produced by others?

A. No.

Q. How do you sell your product? Through what outlets?

A. Through wholesalers.

Q. Are those wholesalers located here on the west coast, or in the east, or where?

A. Northwest.

Q. Are those sales through wholesalers made by you firm to the wholesalers so that you will receive your price when [fol. 2108] the car moves?

A. Yes, that's right.

Q. You have heard the discussion since you've been in the hearing room about the difference between firm sales and transit sales?

A. Yes.

Q. You are familiar with the distinction between those two types of doing business?

A. Well, our business is almost entirely firm. I would say entirely firm.

Q. Do the wholesalers to whom you sell engage in transit business?

A. Not that I know of.

Q. In the sales by your wholesalers to their customers, those are firm sales?

A. That's right.

Q. How many cars do you manufacture and ship from your mill at Junction City in a year?

A. Four to five hundred.

Q. How would you describe your product? Is it green or dry?

A. It's green, almost entirely; sometimes they air-dry some of it.

Q. Do you have a planer?

A. Yes.

Q. Do you call it dimension lumber?

[fol. 2109] A. Boards and dimension and some small timbers.

Q. Are you a member of the West Coast Lumbermen's Association?

A. Yes, we are.

Q. Do you have with you, or have you prepared, or do you have available a statement—

A. I don't.

Mr. Rockwood: I asked him this once before.

Mr. Maguire: He doesn't have any statement?

By Mr. Rockwood:

Q. A statement showing distribution of your cars by states?

A. No, I haven't.

Q. You mean you don't have it with you, or it's unprepared?

A. It isn't prepared.

Q. In what area of the United States do you market your lumber?

A. Well, on the east coast and the Chicago area and California and Denver—the Denver area.

Mr. Maguire: I'm sorry, Mr. Larsen, I didn't get the last location.

The Witness: Denver and in California.

By Mr. Rockwood:

Q. And Chicago?

A. Yes.

Q. Are you able to give us an estimate of the percentage of your production which goes to Chicago and east of Chicago?

A. Oh, approximately 70 per cent.

Q. Seventy per cent?

[fol. 2110] A. Yes.

Q. Do you do any business, any substantial business in the states of Wisconsin, Minnesota, Iowa, Missouri, the Dakotas, Kansas and Nebraska?

A. A little in Iowa.

Q. In what part of Iowa?

A. Decorah.

Q. Decorah, Iowa?

A. Yes.

Q. Do you know what railroad that's on?

A. No, I don't.

Q. I don't either.

Mr. Boe: It's on the Rock Island.

By Mr. Rockwood:

Q. Before you on the table is a copy of an exhibit which Mr. Ehlen presented yesterday, showing the present—illustrating the rates now applying from points on the SP&S to points on the Milwaukee east of Spokane. Do you do any business in the territory local to the Milwaukee shown there in blue and west thereof between that area and Spokane?

A. Very little. We have shipped a few cars to Nebraska.

Q. To Nebraska. Do you recall what route they used to Nebraska?

A. No, I don't recall.

Q. Are you a rate expert?

A. No.

Q. An expert at railroad rates?

[fol. 2111] A. I know nothing about them.

Q. Who designates the routing on the cars of lumber shipped from your mill?

A. The wholesaler.

Q. What is the route customarily used on lumber from your mill to Chicago and east?

A. OE, SP&S, NP or GN, mostly.

Q. To Minnesota Transfer?

A. Yes.

Q. And thence connections beyond?

A. Yes.

Q. That map, which I referred to a moment ago, was shown to you and explained to you heretofore by Mr. Ehlen, was it not?

A. Yes.

Q. Do you have any knowledge, except as that map was explained to you, of the rates which apply from Oregon Electric stations to Milwaukee stations east of Spokane?

A. No, I don't.

Q. Does your company engage in the practice of starting a car from Junction City partially loaded for completion of loading at some point farther on?

A. No, we don't. Occasionally we've had a car stopped for completing load, but very seldom.

Q. On those rate occasions or occasionally, where is the stop made? Is it east of the Cascade Mountains, or west of [fol. 2112] the Cascade Mountains?

A. No; it would be west of the Cascades.

Q. To complete loading with fir?

A. Yes.

Q. Do you ever stop a car to complete loading with pine east of the mountains?

A. No, we haven't.

Q. Does your company engage at all in the practice of starting a car out billed to one destination with directions to stop at that point for partially unloading, to move on to another destination for completion of unloading? Do you do that kind of business?

A. Its been so seldom that I don't remember any cars at all at present.

Q. What has been the experience of your company—do you have on occasion a car billed to a station and refused or rejected by the customer at that station with the necessity to move that car to another destination?

A. No, we haven't.

Q. Have the routes now available to your company for movement of lumber out of Junction City been sufficient to enable you to market all the lumber that you produce without embarrassment or a lot of difficulty?

A. Very definitely.

Q. Very definitely, you say?

[fol. 2113] A. Yes.

Q. Would the addition of the route requested by the Milwaukee, which would be via Spokane to Chicago, and thence by some other lines east, would that assist you in any way in any of your marketing problems?

A. Not that I know of. I can't see how it would.

Q. You are served only by the Oregon Electric, and from what railroad do you order your cars?

Mr. Rockwood: I don't want to lead the witness.

The Witness: Oregon Electric.

By Mr. Rockwood:

Q. What has been your experience on the Oregon Electric with respect to your ability to get cars for loading when you want them?

A. It's been very good.

Q. Have you ever had a car shortage?

A. No, I haven't, other than when we were on the SP, we had.

Q. But never on the Oregon Electric?

A. Never on the Oregon Electric.

Mr. Rockwood: You may cross examine.

Cross examination.

By Mr. Maguire:

Q. Do you have any control over the routing of the cars which you sell to the wholesaler?

A. I probably could, but I don't. The routing comes on the order, and that's the way we ship it.

Q. And so, when you say you have no difficulty, you mean [fol. 2114] that you just follow the wholesaler's routing directions?

A. That's right.

Q. Now, then, when you say that you make—that your business is entirely firm sales to wholesalers, does that mean that they pay you upon receipt of the bill of lading or the shipping papers, or that you hold them on open account, or just how do you deal with them generally?

A. They pay us when we send them the bill of lading, a copy of the bill of lading and an invoice for the lumber.

Q. And from then on, that car, which you have sold to them, is entirely their own responsibility, is it not?

A. Yes.

Q. You're out of it, and what the wholesaler does with that car after that, you have no way of knowing?

A. No, I don't.

Q. And your information—or your statement as to the distribution area used by your wholesalers or your customers in marketing the lumber which then belongs to them is gained entirely, is it not, from the bills of lading which are originally issued?

A. No, not exactly. We always get a paid freight bill.

Q. Oh, I see, and you can also gain information from the paid freight bill?

A. Yes.

Q. Do you absorb the freight, or does the wholesaler to whom you sell the lumber absorb the freight?

ol. 2115] A. Well, of course, if the lumber goes over the estimated weight, we've got to pay that. Otherwise, he absorbs it.

Q. And is it on occasions where the lumber goes over the estimated weight that you see the freight bills, so that you can—

A. No, We always see the freight bills.

Q. You always do get them?

A. Yes.

Q. Are they prepared or paid at destination?

A. Most of them are paid at destination. There is occasionally one that is prepaid.

Q. Now, would you have any way of knowing, as a general matter, whether the wholesaler does divert any of these cars in transit?

A. Yes. Most every car I know where it goes.

Q. You know where it's starting out for?

A. No. I know where it goes.

Q. You know where it goes?

A. Yes.

Q. That's because of those freight bills?

A. That's right.

Q. The freight bills that you get back?

A. That's right. In fact, I don't like it when I don't know where it goes.

Q. I see. Do you deal on such close terms with your own particular wholesalers so that you know to whom they sell?

A. Yes, I do.

[fol. 2116] Q. Very fortunate relation.

A. It's been very good for a good many years.

Q. I was going to ask you about this map which you said had been explained to you. I suppose some representative of the SP&S or of the Northern Pacific or of the Great Northern explained this map to you?

A. Yes.

Q. Whatever explanation you got, you got from them?

A. Yes.

Q. And with that explanation you got as to what the Milwaukee is seeking, you got from them also, did you not?

A. That's right.

Q. Pardon?

A. That's right.

Q. Then you are not a rate expert, are you?

A. No, definitely not.

Q. So, whatever knowledge you have of the Milwaukee's proposal here, you got from the gentlemen on the other side of the case?

A. Yes.

Mr. Maguire: That's all. Thank you.

Redirect examination.

By Mr. Rockwood:

Q. What representative of the SP&S?

A. Mr. Ehlen.

Q. He gave this information to you?

A. Mr. Ehlen, yes.

[fol. 2117] Q. You say that you make out the bills of lading with routing following the instructions of the brokers?

A. Yes.

Q. And from that then, you know the billed destination of each car that leaves your mill?

A. Yes.

Q. You say then that you see the freight bills after the car moves?

A. We demand that we have a paid freight bill.

Q. And on those freight bills, does it show where the car was actually moved and delivered?

A. Yes.

Q. So, in that way, you are able to compare the destinations as shown on the bills of lading and the destinations shown on the freight bills?

Mr. Maguire: Just a moment. I've been very indulgent with Counsel in the matter of leading the witnesses, much more indulgent than he was with me, but there are two objections to that last question.

One is that it is a little bit more leading than ever, and the second is that that is improper redirect examination. It's merely a summarization of what was brought out on cross examination.

Exam. Dishman: Just ask him the direct question.

Mr. Maguire: The horse has gone out of the stable so [fol. 2118] I won't follow up and argue it.

Exam. Dishman: You ask the direct question.

By Mr. Rockwood:

Q. What is the source of your information that you stated that your cars are not diverted in transit?

A. Well, the paid freight bills. We know where they go. We know what the destination is on the bills of lading, and we can check on the paid freight bills where it went.

Mr. Rockwood: That's all.

Recross examination.

By Mr. Maguire:

Q. What did Mr. Ehlen tell you was the proposal of the Milwaukee? You just tell me in your own words.

A. I don't think he told me what they proposed to do.

Q. And that was your only source of information as to what the proposal was? Mr. Ehlen?

A. Yes. I guess he did say that it was to backhaul into this blue area.

Q. That was all that he told you about it?

A. It never meant anything to me.

Q. I see. So, when you say that the Milwaukee proposal will not help you, then you're basing it upon that presentation made by Mr. Ehlen that you just told us?

A. Well, not entirely. We're perfectly satisfied with the service we have now. It's very good.

Q. Well, I know, but we were talking about the Milwaukee proposal. That's all you know about the Milwaukee [fol. 2119] proposal, is just what you've told me?

A. Yes, that's all.

Q. And are these rates going to hurt your business any? This proposal?

A. Well, they couldn't hurt me any.

Mr. Maguire: That's fine. Thank you, Mr. Larsen.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Rockwood: Mr. Golden will call the next witness.

Mr. Golden: Call Mr. Shaw.

Gordon T. Shaw was sworn and testified as follows:

Direct examination.

By Mr. Golden:

Q. Will you state your name, please, Mr. Shaw?

A. Gordon T. Shaw.

Q. And where do you reside?

A. Seattle, Washington.

Q. What is the nature of your business, Mr. Shaw?

A. Oh, grain dealer, country warehouseman.

Q. How long have you been in business as a dealer in grains?

A. Oh, since about 1912. I started out with Albers, and then I went in business by myself in 1918. It would be about 42 years total, 37 years in business for myself.

Q. Are you a member of any grain exchange?

A. Seattle Grain Exchange.

[fol. 2120] Q. Now, directing your attention to your business as a dealer in grain rather than an elevator operator, what do you mean by dealer—what is your business as a dealer in grain?

A. Oh, we buy corn at Sioux City and Minneapolis, and sell it out on the coast; buy wheat from country elevators and sell it on the coast. In the country houses, we store wheat for farmers so they get a lot of money out of it for the loan, various other things—beans, lentils, oats.

Q. About what is the volume of your business per year?

A. Well, I don't keep track of the cars of stuff, but it runs about 14 to 20 million.

Q. Do you know what the approximate annual volume of corn is that's bought in the Pacific Northwest by carloads?

A. It depends year to year—3 to 4 thousand cars a year.

Q. In the previous question, when you mentioned 14 to 20 million, were you talking about bushels or dollars?

A. Dollars. That's dollar value. I read that off my financial statement. I ran into that some place.

Q. Now, this volume of corn that's marketed in the Pacific Northwest, what proportion of that do you handle?

A. Oh, I might handle 650 to 750 cars. I did add it up last year. It was 735 cars. That was from—oh—the end of June till the first of July. Probably lost more money handling that than any business we do.

Q. Where do you purchase your corn, Mr. Shaw?

[fol. 2121] A. Minneapolis and Sioux City mostly; some years out of Denver when they have a crop out there.

Q. Do you purchase any out of Omaha?

A. No.

Q. Do you have any reason for that?

A. Well, it's a higher priced corn. It's out of the area we trade in. If a drought or something happens, why, then, we have to go there in some years.

Q. I take it then that the Sioux City corn and the Minneapolis corn are competitive?

A. Yes, very competitive.

Q. Do they draw pretty much from the same territory?

A. Yes.

Q. In the purchase of corn, do you buy from farmers at the country stations, or do you buy from dealers?

A. Dealers at Sioux City and Minneapolis.

Q. What is your marketing territory in the Pacific Northwest, that is, by states?

A. Oh, Washington, Oregon, Idaho, British Columbia.

Q. Now, when you ship this corn outbound from Minneapolis or Sioux City points, do you designate the routing?

A. Yes.

Q. To what point or points do you initially bill your cars?

A. Spokane for diversion and inspection.

Q. Do you know the final destination of the corn when it [fol. 2122] leaves the eastern points?

A. No.

Q. What then determines your routing of the corn into Spokane for inspection and diversion?

A. Oh, the probable demands for the different lines. Maybe we will have some specific sales, maybe to Albers or Fisher. Where there is some definite routing requested would govern on corn. Recently we had a sale to Marpole, B.C. That didn't come in here. That went up through Minnesota by a half a dozen railroads, but usually we route stuff to Spokane.

Q. Are your sales firm as of the time you start the car moving?

A. No. We always have a few cars rolling along, like those lumber fellows talked about there, on the cuff.

Q. Do you have any particular difficulty in selecting routes which enable you to supply your markets with corn?

A. No. That's no problem.

Q. Who are the principal purchasers of corn in your marketing area?

A. Oh, starting over at Spokane, there's Ralston Purina, Centennial Flour Mills, and numerous small people who now get their corn by truck. That's what broke you railroads. Did you hear that? They now buy their corn by truck.

Then in Seattle, there's Albers Milling, Washington Co-op, Fisher, Tacoma Feed, Sperry—that's General Mills. At Portland, there's Centennial, Hodgen-Brewster, Quaker [fol. 2123] Oats, Triangle Mills, and many other numerous small trade along the line.

Q. What percentage of the corn that you sell out here goes to these people which you've named, to these places that you've named?

A. I think probably about 98 per cent of the corn goes to the feed mixer today.

Q. Who would get the balance of it?

A. Oh, there might be an odd cattle or poultry feeder, some livestock man that would buy a car.

Q. Do you know whether there's any market on the SP&S east of Vancouver up to but not including Spokane?

A. Oh, a very little bit. Particularly this year, with barley cheap, there's no one feeding corn out there that I know of, for one thing, or I'd be after him.

Q. Do you have any idea what the corn volume in that area might be?

A. It's very limited, I would say.

Q. Are there any purchasers of corn on the Union Pacific between Spokane and Portland, including such points as Walla Walla, Waitsburg, Pendleton, The Dalles?

A. There's a feed plant at The Dalles. There's a couple of people at Walla Walla. Pendleton Grain Growers—quite a little corn used in there.

Q. Do you know whether there's any market for corn on the, oh, local SP&S territory west of Portland, down towards Astoria?

[fol. 2124] A. No, there's nothing down there to speak of.

Q. Have you had any market for corn, oh, in this area or any other local area on the SP&S or any of its system, which you are unable to get corn to on existing rates?

A. Oh, yes. The NP and GN and SP&S take care of that in a hurry.

Q. Would you like rates via the Milwaukee to Spokane, thence SP&S? Is there any particular problem in reaching those points?

A. No.

Q. A sale might develop at some local point at some plant on the SP&S west of Portland. How would you go about getting that—arranging to get a car in there?

A. We'd give them a car NP or GN off track at Spokane and move it SP&S to Portland from Spokane.

Q. In other words, you take the destination point into consideration when you first route into Spokane?

A. Yes.

Q. Is corn of equal grade arriving at Spokane on the Northern Pacific, GN, or Milwaukee—does that sell at the same price?

A. Yes.

Q. Have you ever had an instance which made it necessary to discount corn at Spokane?

A. Oh, hell, yes, lots of them. Not any particular railroad, but when you've got an awful lot of corn, like the lumber brokers, they really cut your throat there.

Q. Is that peculiar to any particular railroad?

[fol. 2125] A. No. They're all alike.

Q. It might happen on any?

A. Sure.

Q. It might happen on any?

A. Any road, yes.

Q. Is the route of the Northern Pacific or the Great Northern to Spokane on the movement of corn, thence SP&S to Portland, any more advantageous in the sale of corn than would be a route of the Milwaukee to Spokane, thence SP&S down to the Portland area?

A. That's the proposed route?

Q. That's the proposed route.

A. Well, I don't know what good it could do. We already have those other rates and very little demand. So, that wouldn't help any. It wouldn't help any marketing in the volume of corn.

Q. Do you have any particular need for corn at any point north of Portland?

A. Oh, yes. Chehalis and along through there would be a fair market for corn.

Q. Do you move Northern Pacific or Great Northern corn via SP&S to Portland? Would you be able to use that much?

A. Yes, it would go north from Spokane. That's like Quaker and those fellows who often insist on NP or GN so they can come back up into the Washington territory, as far as Bellingham.

Q. It was just pointed out to me that you used Spokane [fol. 2126] in your last statement. Did you mean Vancouver or Spokane to go north?

A. It comes out of Spokane to Portland, then north to the Seattle territory, like for Quaker Oats and Triangle, and those people.

Q. Mr. Shaw, do you have an opinion as to whether the addition of a route via the Milwaukee into Spokane and thence SP&S down into SP&S System territory would create any new market for corn out there?

Mr. Maguire: That question has already been asked and answered, Mr. Examiner. He said "No".

Exam. Dishman: Well, is that your answer?

The Witness: I would say definitely no, it wouldn't increase the demand in here or create new markets.

Mr. Golden: That's all I have on direct.

Exam. Dishman: Anything more on direct?

Mr. Rockwood: I have nothing.

Mr. Torinus: No questions.

Cross examination.

By Mr. Maguire:

Q. Mr. Shaw, some of your customers do—I'm not singling out any particular railroad at all, but I mean some of your customers do ask for inbound routing into Spokane by certain railroads? Did I understand you correctly?

A. Inbound like, say, Northern Pacific or GN or Milwaukee?

Q. Yes.

A. Yes, they do.

[fol. 2127] Q. And you do have requests for all three of them at different times?

A. Yes.

Q. And that is so they will not get mixed up on their transit?

A. Yes, so they won't run out of transit at the mill.

Q. Now, you said that you had a few cars coming into Spokane on the cuff. In other words, unsold?

A. Yes.

Q. But with regard to the majority of the cars you handle then, I gather that the sale is made before the car reaches Spokane at least, before it reaches Spokane?

A. We always have a hole to go to—we try to. For instance, we have a number of small customers that we carry and mail them an invoice. We have those fellows and then we have to sell Albers and some of those others, and so we cut the price so we will have a place to go. I hope none of my competitors are here.

Q. I didn't intend to pry into that, but what I was getting at was this: Are your sales, the majority of your sales completed before the car is shipped out of the Minneapolis or Sioux City market?

A. No, I would say not.

Q. Well, then, when you say you have cars coming into Spokane, you have a few cars on the cuff—maybe I didn't understand your expression.

A. Well, a few cars that are not sold.

[fol. 2128] Q. Oh, I see, but what you are doing then, you ship the cars and you anticipate your volume of sales at Spokane? Spokane is where you make your sales?

A. Yes; sell cars to Sperry, Fisher, Centennial.

Q. Then you make your estimate as to how much corn you want to handle out there and you ship it out and you sell it en route.

A. Yes.

Q. Or by the time it gets to Spokane, is that the way it is handled?

A. Yes, that's right.

Q. And then it is—you're already committed as to your inbound routing, and then is when the customer exercises his right or his privilege of selection as to what inbound routing he wants in order to build up his transit credits?

A. Yes.

Mr. Maguire: That's all. Thank you.

Exam. Dishman: Did you state what your position is with your company?

The Witness: Just Gordon T. Shaw, sole owner.
Exam. Dishman: Oh, you're the sole owner?
The Witness: Yes.
Exam. Dishman: Anything more?
Mr. Golden: No questions.
Exam. Dishman: Witness excused.
(Witness excused.)
[fol. 2129] Mr. Rockwood: Call Mr. Nelson.

C. A. NELSON was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you state your name to the Reporter?
A. C. A. Nelson, Traffic Manager.
Q. Traffic Manager of what company?
A. Herbert A. Templeton Lumber Company, wholesaler.
Q. In Portland?
A. 807 Terminal Sales Building.
Q. In addition to the wholesaling business that you refer to, is the Templeton organization interested in any manufacturing plants?
A. Yes, they are. There are about seven of them.
Q. Start in to tell what they are. Go slowly.
A. I'm General Traffic Manager of the South Fork Lumber Company at Sweet Home, Oregon.
Q. South Fork Lumber Company at Sweet Home?
A. On the Oregon Electric.
Q. On the Oregon Electric. The Santiam Branch?
A. The Santiam Branch, yes.
Q. All right, go ahead, please.
A. The Yellowstone Pine Company, a division of the South Fork Lumber Company at Belgrade, Montana, on the Northern Pacific.
Q. All right.
[fol. 2130] A. The Valsetz Lumber Company at Valsetz, Oregon.

Mr. Maguire: How is that last spelled?
The Witness: Valsetz—V-a-l-s-e-t-z.

By Mr. Rockwood:

Q. Valsetz Lumber Company. What railroad is it located on?

A. Valley & Siletz Railroad, and I'm the Traffic Manager of the railroad.

Q. And the Valley & Siletz Railroad connects with the—

A. Southern Pacific at Independence, Oregon.

Q. And it has no other route than the Independence connection with the Southern Pacific?

A. That's right.

Q. All right. Are there any other companies?

A. The Lincoln Lumber Company at Lincoln, Washington, which is a division of the Valsetz Lumber Company; the Western Pine Manufacturers—

Q. Just a minute. So far as the Lincoln plant, what rail serves you?

A. The Lafferty Transportation Company, a barging company which connects with the Great Northern Railway at West Kettle Falls, Washington.

Q. All right. What next?

A. The Western Pine Manufacturing Company, division of Valsetz Lumber Company, at Spokane, Washington, a milling in transit plant.

[fol. 2131] Q. A milling in transit plant?

A. Milling in transit and manufacturing plant. We manufacture all types of forest products from pine and larch.

Q. Sash and door?

A. Sash—no doors. Sash and furniture and cut stock.

Q. And that plant is served by all the railroads serving Spokane?

A. They're on Great Northern rails, but they have reciprocal switching to all railroads in Spokane.

Q. Great Northern, Northern Pacific, Milwaukee, Union Pacific, Spokane International?

A. Yes.

Q. Is there another one you haven't mentioned?

A. Yes. The Mount Emily Lumber Company at La Grande, Oregon, which is also a division of the Valsetz Lumber Company, which we acquired on February 1st, and I'll become—I'll handle the traffic after March 1st this year. They're located at La Grande, Oregon, on the Union Pacific Railroad.

Q. How long have you been in the lumber distribution business?

A. About—well, I've been—I had been with Clark & Wilson Company for 19 years. I was 11 years their shipping clerk at Prescott, Oregon, at their mill on the SP&S Railroad, and eight years as Traffic Manager and assisting in sales at the main office at Linnton, which was reciprocal to all railroads at Portland, and I've been with Herbert A. [fol. 2132] Templeton Lumber Company for 10 years.

Q. Herbert A. Templeton, as such, is that a corporation or a partnership?

A. It's a partnership.

Q. And it has these interests which you have enumerated?

A. Yes, in other corporations. I also left one out. We also have a wholesale organization in Spokane, Herbert A. Templeton Lumber Corporation.

Q. Affiliated with the partnership?

A. With the partnership.

Q. And from your description, you are engaged in manufacturing and wholesaling?

A. That's right.

Q. Is the wholesaling business of the Templeton organization handled entirely through the partnership, Herbert A. Templeton Lumber Company?

A. It is as far as the Oregon business is concerned, and also the Yellowstone Pine, but Spokane is handled through the Spokane office.

Q. Well, what—we'll come to volumes in a few minutes, but, as a wholesaler, what area does the Herbert A. Templeton Lumber Company reach into?

A. You mean where we sell?

Q. Where you get your product?

A. Well, we buy as a wholesaler from just about every [fol. 2133] area that lumber is produced; in California,

Oregon, Washington, Idaho, Montana, British Columbia, and Alberta.

Q. What is the practice of the company, the Templeton Company, in the sales of the product which it either manufactures directly or through an affiliate, or as to which it acts as wholesaler? That is, how do you get rid of it in the markets farther east?

A. The mills, of course, sell through the wholesale organization, Herbert A. Templeton wholesale organization, and the wholesale organization sells through commission men located in various sections of the United States, and we have commission men scattered throughout the United States; through other wholesale organizations, and also directly to retailers.

Q. You have several direct sales that are made without the intervention of a wholesaler?

A. That's right.

Q. Does your organization engage in firm sales or transit sales, or a combination of both?

A. A combination of both.

Q. To what extent are your sales firm sales?

A. Oh, the great majority, probably 98 per cent, I would say.

Q. Are [illegible] les?

A. Are firm sales. Less than 2 per cent, probably 2 or 3 per cent, not over that, a very, very small percentage are transit cars.

[fol. 2134] Q. What is the approximate volume of cars handled by the Templeton organization as to which your jurisdiction as Traffic Manager extends?

A. Well, in our Portland office last year, we shipped from Valsetz 1326 cars, and they lost approximately 500 cars because of the strike. Their normal is around 1800 to 1900 cars. The South Fork Lumber Company at Sweet Home about 510 cars last year; our Yellowstone operation, they started operating very late in the year and shipped only 79 cars. I don't know what their production will be this year—probably around 3 or 4 hundred or more.

We shipped 4881 cars in wholesale in 1954.

Q. Just a minute. That is—

A. That is the Portland office.

Q. That's the Portland office. Those were sales of products manufactured by others not affiliated with the Templeton organization?

A. That is right, by others. That makes the total through our Portland office of 6796 cars in 1954. Now, that does not include any logs shipped, or lumber that went into any of our own plants inbound—only outbound shipments to consumers. It does not include any truck or water shipments.

Q. Including the shipments of your own lumber and the shipments handled by your wholesalers—by you as wholesalers, what was the approximate volume last year?

[fol. 2135] A. You mean in both the Portland and Spokane office?

Q. Yes.

A. Probably close to 10,000 cars. I haven't the figures for the Spokane office, but I would say it would be around there.

Q. Now, these figures that you have given, do they include the La Grande operation?

A. No. I'll become Traffic Manager for the La Grande operation after March 1st. Their production, which is about 35 million, will be probably around 1200 to 1400 carloads a year.

Q. Thirty-five million board feet?

A. Thirty-five million board feet, and probably this year we would handle well over 12,000 cars.

Q. What is manufactured at Valsetz?

A. Fir lumber—fir and hemlock.

Q. What is manufactured at Sweet Home, Oregon?

A. Fir and hemlock.

Q. What is manufactured at the Lincoln plant and the Yellowstone plant and the La Grande plant?

A. The Lincoln plant is Ponderosa pine, larch and inland fir. The Yellowstone plant is mainly lodgepole pine. The La Grande plant is Ponderosa pine and larch and inland fir. The Western Pine Manufacturing Company is a transit operation. The product from the Lincoln plant, it's shipped from Lincoln, Washington, via Lafferty Transportation, Great Northern Railroad into the plant at Spokane for remanufacturing.

[fol. 2136] In addition to that, we buy from plants around the country for transit operations.

Q. And what is the general character and range of the lumber products which you handle as wholesalers?

A. We ship into every state of the union. In 1954, we shipped into every state of the union and every province of Canada except British Columbia and Mexico.

Q. Now, I want to first—you get down into California. Do you handle redwood, for instance?

A. No, we do not handle redwood.

Q. Well, what species do you handle?

A. In California, we handle Ponderosa pine, sugar pine, white fir, and occasionally we have a car of Douglas fir out of there.

Q. And in Oregon, Douglas fir?

A. Douglas fir, hemlock, cedar, Ponderosa pine, larch, and inland fir, and spruce.

Q. And the Spokane plant is Ponderosa pine?

A. Ponderosa pine and fir and larch.

Q. Have you handled fir out of British Columbia?

A. We handled fir and Sitka spruce and white spruce, northern white spruce, out of British Columbia.

Q. And out of Washington?

A. Washington is the same as Oregon. Out of Alberta, it's white spruce.

Q. And you said that your operations as a wholesaler in-
[fol. 2137] cluded purchases over as far east as Montana?

A. That's right.

Q. So that you handle as a wholesaler Ponderosa pine from east of the mountains?

A. Yes.

Q. And Idaho white pine?

A. We have no Idaho white pine.

Q. In the industry, is the Idaho white pine a wood of rather limited supply?

A. It is.

Q. What would you say in the pine industry from your experience as a Traffic Manager is the predominant pine wood in the Oregon and Washington areas of the Inland Empire?

A. Ponderosa pine.

Q. And what is the predominant pine wood in the pine belts of California?

A. Ponderosa, although there is sugar pine also.

Q. Are Ponderosa and sugar pine generally competitive woods?

A. Well, no, they are not. The sugar pine is more a white pine.

Q. A softer wood?

A. Softer wood.

Q. Than is the Ponderosa pine?

A. I'm not too familiar with the sugar pine.

Q. Did your office prepare for its own use a map of the United States showing your distribution in the year 1954 by states?

[fol. 2138] A. We prepared that for our sales meeting in January.

Mr. Rockwood: I would like to have marked for identification as Exhibit No. 33—

Exam. Dishman: Exhibit No. 33.

Mr. Rockwood: —a map of the United States with various notations on it.

(Defendant's Exhibit No. 33, Witness Nelson, was marked for identification.)

By Mr. Rockwood:

Q. Mr. Nelson, is this map of the United States, which has been marked as Exhibit 33, the map that you referred to a moment ago?

A. Yes.

Q. Tell us briefly what this map is designed to show.

A. Well, it's designed for our purposes. It's designed to show where, at our sales meeting, the states that we shipped to and the number of cars into each area. In other words, we can look at that map and see where we're weak and where we need to build up a stronger sales organization, or where we need more commission men.

In other words, you'll note that in Ohio it's weaker than in the state of Pennsylvania or the state of Michigan. The state of Indiana is weaker than the state of Illinois. It's

designed to show where we are weak and where we are strong.

Q. Now, this includes—the 6796 cars includes the products handled by the Templeton organization at the Portland office?

[fol. 2139] A. At the Portland office only. That does not include the Spokane office.

Q. And it includes that which was handled as wholesalers and that handled as disposition of products of its own mills?

A. Yes. This includes the product of the wholesale organization which was 4881 cars—Valsetz Lumber Company 1326 cars, South Fork Lumber Company 510, and the Yellowstone operation 79 cars.

Mr. Maguire: Could I ask a question for clarification on that?

Mr. Rockwood: Yes.

Mr. Maguire: Mr. Nelson, this total here is all of the—it covers all of the cars handled by the Portland office?

The Witness: By the Portland office.

Mr. Maguire: And includes but does not wholly consist of cars which were shipped from territory served by the Oregon Electric and Oregon Trunk? It includes them, but it also has other sources?

The Witness: It has sources from California to northern British Columbia and Alberta.

Mr. Maguire: Thank you.

By Mr. Rockwood:

Q. You have before you on the table a map, which is a copy of an exhibit offered yesterday by Mr. Ehlen of the SP&S, showing the SP&S and the Milwaukee System. Are you generally familiar with the rate situation as disclosed by that map?

[fol. 2140] A. Yes, I am.

Q. The legend has been explained to you?

A. Yes.

Q. Do you ship off the Santiam Branch of the Oregon Electric?

A. We do.

Q. Now, do rates from the Santiam Branch apply to any Milwaukee local stations east of Spokane?

A. They do not. From the Santiam Branch to the stations in blue, if we could ship to one of those stations, we have to pay seven cents from Sweet Home to Albany.

Q. In addition to—

A. In addition to the rate.

Q. The rate from Albany to those points?

A. Yes. In other words, there is a penalty from a local point to there.

Q. You understand from the Santiam Branch—how would you get into this territory shown in yellow?

A. We would ship OE, SP&S, NP or GN, Minnesota Transfer, then Milwaukee.

Q. Yes, to a Milwaukee local point?

A. Yes.

Q. And single factor rates do apply from the Santiam Branch into that yellow territory?

A. Yes.

Q. The yellow Milwaukee territory?

[fol. 2141] A. Yes.

Mr. Maguire: Via the transfer.

By Mr. Rockwood:

Q. Via the transfer?

A. Via the transfer.

Q. Are you familiar with all existing routes applicable on lumber products out of the states of Washington and Oregon into the territory to the east?

A. I believe I am, as well as anyone, as far as lumber is concerned.

Q. Yes, and you derive that familiarity from examination of tariffs?

A. I do.

Q. You're competent to read a tariff, Mr. Nelson?

A. Well, I've read them for the last 20 years or more.

Q. Do you customarily use all of the existing routes which are available from the Pacific Northwest into the territory to the east?

A. I do.

Q. Are you familiar with the proposals of the Milwaukee in this case?

A. I am. I've read the complaint.

Q. You've read the complaint?

A. Yes.

Q. And you are aware of the extent of the rates which they are requesting in this case?

[fol. 2142] A. Yes.

Q. Now, would it be of any advantage to your company in any of its operations to have rates available from the Santiam Branch of the Oregon Electric via the SP&S to Spokane, and thence Milwaukee east, on the same basis as now apply from main line points of the SP&S, such as Albany?

A. You're referring now to these in the blue and the green?

Q. Yes.

A. It would have.

Q. You would have some occasion to use them?

A. We would have some occasion. We had 30 cars into South Dakota, 79 to North Dakota, 12 in Montana, and some into western Minnesota.

Q. You might have—

A. Probably occasionally, we'd add the seven cents in order to move the car off the Santiam Branch.

Q. Would you have the occasion to use rates from SP&S origin points, including the Oregon Trunk and the Oregon Electric, via the Milwaukee at Spokane?

A. Yes, or Union Pacific.

Q. Well, you could get out of there on the Union Pacific, but would you—well, we'll drop that one because you get out of there all right, you say.

A. Very well.

Q. But would you have occasion to use a route from [fol. 2143] Oregon Electric and SP&S proper points to local points on the Milwaukee east of Spokane, between Spokane and Mobridge, South Dakota, on the same basis as now applies east of Mobridge?

A. I have occasion to use that Mobridge rate.

Q. Then it might be you might have some occasion to use that route?

A. Yes.

Q. If they were established?

A. Very limited though. We might have a few.

Q. Does the Templeton organization or any of its affiliates engage in the practice of starting out a car with a partial load with directions to stop to complete loading at some point farther on?

A. You mean where you stop a car for completion of loading? We do a great many.

Q. Have you ever had occasion to stop cars at St. Maries, Idaho, from any source?

A. We've bought from St. Maries. I don't recall stopping one there. I wouldn't say for sure, but I don't recall it. It hasn't been in the last two or three years anyway.

Q. But you've bought carloads at St. Maries to move east?

A. Yes.

Q. Have you been able to handle their product so purchased?

A. Yes.

Q. Have you ever had any difficulty in obtaining pine in [fol. 2144] the territory east of Spokane to complete loads?

A. No.

Q. Are some of your mills members of the Western Pine Association?

A. We are.

Q. And some of your mills are members of West Coast Lumbermen's Association?

A. We are.

Q. For instance, Valsetz Lumber Company?

A. A member of the West Coast Lumbermen's Association, and Lincoln Lumber Company is a member of the Western Pine Association, and I believe Mount Emily is a member of the Western Pine Association.

Q. Are you familiar generally with the extent of the mills available for procuring Ponderosa pine in the territory east of Spokane?

A. Yes.

Q. Can you give us—are they on all railroads?

A. When we stop cars to pick up Ponderosa pine, we immediately stop those on the Union Pacific in Oregon, although we do stop cars in Montana, which are for the Northern Pacific. We stop at Libby, Montana, on the Great

Northern, and at Spokane on our own mill, and also on the Northern Pacific.

Q. On your own mill?

A. Yes.

[fol. 2145] Q. Generally, what points on the Union Pacific in Oregon do you go to for completion of loading?

A. Most of the stations along the line where there are mills.

Q. Most of them stationed along the mail line of the Union Pacific?

A. Main or branch lines.

Q. Do you get down on the Union Pacific branch to Bend?

A. Yes.

Q. You complete loading on that line?

A. Yes, and over to Prineville.

Q. Have you ever started a car out from an SP&S point west of the mountains to complete loading on the Oregon Trunk?

A. Yes, we have.

Q. Or at any other stations?

A. We have.

Q. Have you ever stopped at Klickitat?

A. Yes, we have, although we buy very little from the J. Neils Lumber Company, though we have stopped there at Klickitat, and we have originated cars there to stop at Belgrade too.

Q. Can you tell us whether those part loads would run heavily fir, to be completed with pine, or fir with fir, or pine with pine?

A. Varied. We had one this morning we started. It starts on the west side with fir, 9000 feet of fir, and 20,000 feet of pine. You might run across another one with 20,000 [fol. 2146] feet of pine—fir, rather, and 4 or 5 thousand feet of pine. It varies.

Q. I'm not asking the railroad. I'm asking where that car is going to stop.

A. The one I'm talking about this morning starts at Goshen and stops at Canby, California.

Q. Goshen is where?

A. Goshen is on the Southern Pacific. We start a great many cars.

Q. Of those cars which are stopped to complete loading, are they of any particular category, that is, between firm and transit cars?

A. The cars that are stopped to complete loading are all firm cars.

Q. Have you ever had occasion to stop a transit car to complete loading?

A. No.

Q. A car that is stopped to complete loading, is that more or less of a tailor-made job?

A. It is.

Q. To fill a particular order?

A. Yes. In other words—

Mr. Maguire: Pardon me. I'm not interrupting you, Mr. Nelson, but I think there should be, if there's not a rule of evidence, what's sauce for the goose is sauce for the gander, and I believe that Mr. Rockwood should be cau- [fol. 2147] tioned that he is getting a little bit far out in leading his witness. His questions have been very strongly leading in form for the past five or ten minutes.

Exam. Dishman: You used the expression "tailor-made", Mr. Rockwood.

Mr. Rockwood: I'll ask the witness.

Mr. Maguire: He is suggesting an answer to the witness by that question.

Exam. Dishman: Well, let the witness explain it.

The Witness: Well, what I understand—we have a retail yard in the east, not too large a yard, and they want pine, some fir, maybe some kiln dried fir, and also green fir. Take like our Valsetz operation, we might put in a few 2 by 4's and flooring and siding, and stop the car in eastern Oregon and pick up some pine for them, or we might stop it in Grays Harbor to pick up shingles or plywood.

Mr. Maguire: The point I wish to raise, Mr. Examiner—I don't wish to belabor it—is that Counsel, to be consistent, should say under what circumstances does he stop to complete load, rather than a suggestion of "In the case of tailor-made orders, do you stop to complete loading?"

Now, that is just as much leading as the questions on which he laid such severe restrictions when I was cross examining.

Exam. Dishman: Well, ask the witness questions direct. Is that all you understand by "tailor-made"?

[fol. 2148] The Witness: Yes. In other words, it's an order to serve the needs of the retail yard.

Exam. Dishman: All right. Proceed.

By Mr. Rockwood:

Q. Do you have any occasion in your business to bill cars out to stop at one point to partially unload and take on to another point to complete unloading?

A. We do.

Q. Does the absence of the route which the Milwaukee now seeks in this case have any effect on your ability to handle business of that type?

A. No.

Q. When business of that type is handled, generally, in what part of the United States does that occur?

A. Generally in the middle west, east of Minnesota Transfer, in the southwest, and also as far—well, in the east and in the south.

Q. What consideration do you give the matter of rates to particular territories in determining whether a car will be moved to part unload at one point and taken on to another?

A. Well, of course, the maximum rate applies from point of origin to the point of destination, and I guess we understand that.

Q. That's the application of the rates?

A. Yes.

Q. Would you have occasion to stop a car to partly unload in South Dakota, to take on to a point east of Chicago?

[fol. 2149] A. We never have.

Q. Would you do that?

A. Well, the rate discrepancy is too great.

Q. By the rate discrepancy, what do you mean?

A. The 98 cent rate to South Dakota and the $1.30 rate east of Chicago, and absorbing 32 cents is too great a difference.

Q. Would you indulge in the practice of stopping a car west of Chicago to part unload and take the balance of the load east of Chicago?

A. We have done it. In fact, we have a car on the books right now to stop in Wisconsin and go over to Michigan, over to Michigan for the final.

Q. Are the rates to Wisconsin and Michigan the same, or are they different?

A. They're about $1.23½ to Wisconsin and $1.30 to Michigan. We pay the $1.30 rate on the entire shipment.

Q. Is it frequent that you will have two stops in different rated territories?

A. In different rated territories?

Q. Yes.

A. No, not too frequent.

Q. It is not frequent?

A. No.

Q. On this car that you spoke of that was stopped in Wisconsin and then unloaded in Michigan, was there any- [fol. 2150] thing peculiar about the commodity in that car which made such stops appropriate?

A. It was a car of plywood.

Q. A car of plywood?

A. And we were committed to a firm in Wisconsin—

Mr. Maguire: I couldn't hear it.

Exam. Dishman: I'm having trouble hearing you too.

The Witness: It was a car of plywood, a car of plywood.

Exam. Dishman: You said something more, didn't you?

The Witness: And we were committed to a firm in Wisconsin for a small portion. The majority of the car went to Michigan, however.

By Mr. Rockwood:

Q. On the business that you handle, what has been your experience on this subject: Do you have cars which are rejected by the customer under circumstances such that it is necessary to move those cars to a destination other than the destination of the first customer?

A. We have occasional cars that are rejected. In handling the volume we do, you're bound to get a few rejected ones.

Q. How much would that run to? How frequently does that happen?

A. Oh, probably over—not over 10 or 12—a dozen a year maybe. It will average one a month probably.

Q. Out of your total of—what did you say? 10,000 cars?

A. Well, that doesn't include Spokane. I'm not familiar with whether they have any rejections or not.

Q. I see. Is it necessary in those cases to divert the car to [fol. 2151] another destination, or how are they disposed of?

A. Very occasionally. In the majority of the cases, an adjustment is made with the customer.

Q. In a majority of the cases?

A. Yes. Occasionally we do divert if we should find a better sale, or we make an adjustment with the customer, and, of course, if it's on the team track and he hasn't accepted the car, we have the diversion privilege. If it goes to his siding, we have no diversion privilege, and we have to take the rate from that point into consideration too then.

Q. If it's on the team track and it is partially unloaded, can you divert?

A. No, if he had accepted the car and partly unloaded it.

Q. You cannot divert it?

A. No.

Q. That one a month or that—excuse me—what did you say about one a month, or 10 or 12 a year?

A. About one a month.

Q. That would be about one a month. That includes the cars which are disposed of without diversion, as well as—

A. That includes the ones without diversion.

Q. Or those that you spoke of where diversion is sometimes necessary?

A. Rejected cars or cars that we have a dispute on.

Q. If the rates on the same basis as now apply from [fol. 2152] Albany, Oregon, on the Oregon Electric to Milwaukee local points east of Mobridge—east of Spokane, were made applicable to stations on the Santiam Branch, then would your requirements for transportation and routing be satisfied?

A. That would take care of our needs off the Santiam Branch, yes.

Q. Now, would the addition of the route that's now requested by the Milwaukee with single factor rates from SP&S points via Spokane to all points on the Milwaukee and its connections east of Spokane, would that be of assistance to you in the marketing of your products?

A. No.

Q. Are the existing routes adequate—

A. Yes.

Q. —for that purpose?

A. Yes.

Q. With the addition of the Santiam situation which I have mentioned?

A. Yes.

Q. Is the route requested by the Milwaukee necessary to help you sell—help you solve any problem relating to stops to complete loading, or stops for partial unloading, or for the disposition of rejected cars?

A. Not to any problems that have come to my attention so far.

Q. As Traffic Manager for the Herbert A. Templeton [fol. 2153] Lumber Company, do you keep informed as to the supply of cars available at the various mills with which you deal in this area?

A. Yes.

Q. And that includes mills on all of the railroads serving this area?

A. Yes.

Q. Do you buy off the Milwaukee?

A. We do buy from a few mills on the Milwaukee.

Q. Served only by the Milwaukee?

A. Probably the only one served only by the Milwaukee is the one at St. Maries.

Q. I was thinking of western Washington now and northwestern Washington.

A. We have bought cars at Morton, Washington, and we have bought them at Port Angeles, Washington.

Q. When you said the only mill served by the Milwaukee was at St. Maries, what territory were you referring to? East of Spokane or west of Spokane?

A. East of Spokane.

Q. East of Spokane?

A. Yes.

Q. Then your experience in the matter of car supply you say covers all railroads in the states of Oregon and Washington and California?

A. That's right.

[fol. 2154] Q. And up here, would that include the Great Northern, Northern Pacific, Milwaukee, and Union Pacific?

A. Yes, sir.

Q. Southern Pacific?

A. Yes.

Q. The SP&S?

A. Yes.

Q. And its subsidiaries?

A. Yes.

Q. Well, now, what has been your experience in the last couple of years with respect to car supply at mills with which you deal or for which you act on the Oregon Electric or SP&S or Oregon Trunk?

A. It's been very good. We have no complaint, and, during the period of car shortage two or three years ago, it was probably better on the SP&S System than on the other lines.

Q. And on the other lines, which are you referring to when you say "the other lines"?

A. Southern Pacific.

OFFER IN EVIDENCE

Mr. Rockwood: I offer Exhibit 33 in evidence.

Mr. Maguire: No objection.

Exam. Dishman: It is received.

(Defendant's Exhibit No. 33, Witness Nelson, was received in evidence.)

Exam. Dishman: Does that conclude the direct?

[fol. 2155] Mr. Rockwood: My direct. I don't know if anyone else has any more or not.

Mr. Torinus: I have nothing further.

Exam. Dishman: We will recess now for lunch until 2:00 p.m.

(Whereupon, at 12:15 p.m., a recess was taken until 2:00 p.m., of the same day.)

[fol. 2156] AFTERNOON SESSION 2:00 p.m.

Exam. Dishman: The hearing will come to order, please.

Mr. Rockwood: Mr. Nelson is on the stand for cross examination.

Cross examination.

By Mr. Maguire:

Q. You were giving some figures of distribution of your products from your various plants into the record, and they went in rather fast, and I asked you whether you had a sheet that you could show me that would refresh my memory. I'll just look at this for a moment if I may. Maybe I'd better stand over by you here.

Now, this sheet shows and these are the figures that—I think you read the bottom columns of figures of the outputs for each one of these plants, did you not?

A. This was done last year for three months on account of the strike.

Q. You're talking about the output at Valsetz?

A. Yes.

Q. But that shows for 1954 a total of 6796 cars which were the output of Valsetz, which had been depleted by reason of the strike, the South Fork plant, the Yellowstone plant, and then your wholesale?

A. Yes.

Q. Now, that is shipped to points in the United States and Canada?

A. That's right.

[fol. 2157] Q. Your United States total was 6587?

A. That's right.

Q. Now, I notice that of that 6796, there's 4881 cars under the heading "Wholesale". Are those cars—were those cars loaded with lumber which you procured from other sources than your own plant?

A. Other than our own, yes.

Q. And as I recall, your operation being a very large one, you secured the lumber loaded in those 4800 odd cars from practically all of the Pacific Coast area?

A. (Nodding.)

Mr. Rockwood: He nodded his head. You'd better speak so the reporter will get your answer.

The Witness: Yes.

By Mr. Maguire:

Q. Now, out of that 4881 cars, could you give me any idea as to the number of cars in 1954 which you procured or purchased in the area served by the SP&S System? That includes the Oregon Electric and Oregon Trunk.

A. I do not believe it would be available because there is no record kept of the point of origin. I could get the record of the cars that originated in the fir area of Oregon and Washington, Douglas fir, separate from the pine that originated east of the mountains, but not as to what originated on the Oregon Electric.

Q. Well, could you give me any idea as to whether that [fol. 2158] is a large percentage of the nearly 4900 cars that originated on the Oregon Electric?

A. I have—I would say that of those probably 10 per cent or 15 per cent originated on the Oregon Electric, about 15 per cent.

Q. That would be between, say, 490 and—

A. I would say around between 6 and 7 hundred originated—wait a minute—I'm off on that. I'm taking the South Fork count in. Ten per cent, probably around 4 to 5 hundred cars on the Oregon Electric, exclusive of our own Valsetz operation.

Q. So that, therefore, so far as the rates here under discussion are concerned, about 10 per cent of the cars which you secure from outside your own plants would be involved in the SP&S-Milwaukee controversy, isn't that correct?

A. That is correct, although we do secure cars from the SP&S up the river in Washington too, which originate there.

Q. I see. Could you give me any approximation as to how many, or what percentage of this 4800 cars you get up in the Bingen area?

A. Whatever I would give you would be pure guess, and probably 5 per cent would be a guess—make it 15 per cent probably.

Q. So that would be a total of 15 per cent—10 per cent from the Oregon Electric, and 5 per cent from the Bingen White Salmon area?

A. And probably another 5 per cent on the Oregon Trunk. [fol. 2159] Q. Yes. Well, then, would you say that is probably a maximum percentage?

A. Probably a maximum percentage.

Q. Then you would have a minimum of 80 per cent of your total carload shipments which did not originate in your own mills or plants, which would be affected by this controversy?

Mr. Rockwood: Wait a minute. Did you say that correctly? You said a minimum of 80 per cent would be affected by the controversy?

Mr. Maguire: No; that would not be affected.

Mr. Rockwood: Then I misunderstood your question.

Mr. Maguire: That's what I meant to say. I hope I said that.

The Witness: That would be probably—it seems like a high figure though—probably—I didn't—there's no record of this kept, of the various railroads at origins. Anything I'd say would be a guess.

By Mr. Maguire:

Q. Oh, yes, that's understood. I'm not trying to hold you down.

A. On the railroads, on the Oregon Electric, the SP&S, and the Oregon Trunk, let us put that at 25 per cent.

Q. You want to put it up to 25 per cent?

A. Put it up to 25 per cent.

Q. Does that Oregon Trunk include anything that might be shipped out on the joint tracks over there with the Union Pacific?

A. That would include the Oregon Trunk, and not if it [fol. 2160] was routed Union Pacific. We divide that traffic.

Q. I see. Well, then, we can say that this would be purely a guess and I don't intend to hold you to those figures, that 75 per cent of your tonnage secured outside of your own plants would not be affected in any way by this controversy?

A. Yes.

Q. That's a fair statement?

A. That's a fair statement.

Q. And in view of your very large operations and the vast geographical scope of them, your business, your firm is in such position that they can selectively buy in the fir belt, for example?

A. Yes.

Q. They can fulfill their needs by one route or the other?

A. That's right.

Q. And that is one reason why you haven't had any trouble with your rate situation?

A. We have had no trouble.

Q. And that's one of the reasons for it?

A. It is one of the reasons for it.

Q. Now, you also stated that you have bought some cars at St. Maries, Idaho, which, as we all know, is a local point on the Milwaukee, for sale east of St. Maries.

A. Yes.

Q. And that you have had no difficulty so far as rates and [fol. 2161] routes are concerned with those purchases. Did I understand you correctly?

A. We have in the past bought an occasional car there, although at the present time that purchase would be handled through our Spokane office.

Q. Yes.

A. Before the Spokane plant was in operation, we did buy occasional cars, which, of course, were routed Milwaukee.

Q. And you had no difficulty?

A. We had no difficulty. They were routed Milwaukee long haul.

Q. And, of course, when they are routed Milwaukee, you can ship beyond the Milwaukee to its connections to practically any place in the eastern United States, can't you?

A. Yes.

Q. Now, I want to refer briefly to these transactions where you sell a part load and then carry on the balance —part unloads, as they are called. You state that you do not ordinarily partly unload and dispose of a part load in one rate territory, and then ship on to a higher rate territory because of the great discrepancy.

A. We do occasionally, but not ordinarily.

Q. And ordinarily the reason, for example, the shipment that you named, where you part unloaded in Wisconsin, which carries $1.23 rate, and carried the balance over to Michigan, which has a $1.30 rate, that was a shipment of plywood?

[fol. 2162] A. Yes.

Q. And there the value of your cargo, plywood generally being of higher value than the ordinary grade of lumber, you could absorb that difference, wouldn't that be one reason?

A. Well, not necessarily. It could apply on lumber too. We would take that into consideration at the time of making the sale, and, if, after absorbing the difference in freight, we still had a profit in the car, we would go on with the transaction.

Q. Sure. In other words, if you either had a high value load, that is, a high value cargo item, or where you can sell your part load in the immediate territory at a premium, which would make up for the difference in rates, you would consider doing it?

A. That's right. If we can make a profit on the car, we will do that.

Q. Surely. Now, there's just one more question that I want to pursue with you, and that is on the question of car supply during periods of car shortage or in tight supply. I believe, as I recall, you stated that, so far as the SP&S and its subsidiaries are concerned, that they gave you just as good service as any other railroad did?

A. They did.

Q. However, during the period of car shortages, the SP&S is a little bit hard put to it, aren't they, in furnishing cars?

A. Oh, yes.

Q. Just like anybody else?

[fol. 2163] A. Yes.

Q. Now, you had mentioned that you had bought a few cars of lumber at local Milwaukee points, or that originated on the Milwaukee. Do you recall whether you ever bought any of those—I mean—ever shipped any of those cars during a period of car shortage?

A. Well, we probably did. If the mill had car trouble, it wouldn't come to our attention unless the mill was behind in shipment, and they came to us and said that the reason they didn't ship was because they could not secure cars.

Q. That's right. Now, I just wish to ask you if you can recall any case in which you shipped from a mill located on the Milwaukee, shipped by way of the Milwaukee, whether you at any time had any trouble with car supply?

A. I do not recall any.

Mr. Maguire: That's all. Thank you—oh, just a minute, please. I just have one other.

By Mr. Maguire:

Q. Just one general question, Mr. Nelson, if you don't mind: You stated that, if the SP&S established—I just have one very general question. Now, you state that you are interested in your own particular business, and that's the reason that the proposed rates would be of no assistance to you, to your operation. Would they do any harm to your operation?

A. The only harm they could possibly do would be, if it affected the car supply on the SP&S System. In other [fol. 2164] words, today the Great Northern and the Northern Pacific supply the SP&S with cars, and they do a very fine job of it, the three railroads that are in there. I, of course, couldn't answer as to what would happen.

Q. Do you think that, if the Milwaukee came in in competition with the Northern Pacific and the Great Northern, that they would be more lax in their car supply than they have in the past?

A. That I can't answer.

Q. That would be the only apprehension you'd have about it?

A. Yes.

Mr. Maguire: That's all.

Mr. Rockwood: That's all. Thank you, Mr. Nelson.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Rockwood: Call Mr. Miller.

ROBERT G. MILLER was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Would you state your name to the Reporter, please?
A. Robert G. Miller.
Q. And where do you live, Mr. Miller?
A. I live here in Portland.
Q. And what is your business?
A. I'm in the wholesale business, the George E. Miller [fol. 2165] Lumber Company. I'm a partner in the business.
Q. That, I take it, is not a corporation, it's a partnership?
A. It's a partnership.
Q. In what capacity do you work with that partnership?
A. I'm the General Manager of the company.
Q. Do you have any other connections with any other companies, other than the George E. Miller Lumber Company, or does the partnership have any other connection with any others, other than the partnership itself, engaged in the wholesale business?
A. George E. Miller Lumber Company owns the Cascadia Lumber Company at Toledo, Oregon.
Q. Is that a manufacturing plant?
A. It's a manufacturing plant.
Q. Toledo is on the Oregon coast, served by the Southern Pacific?
A. That's right.
Q. Do you have any connection with any other lumber manufacturers?
A. We handle the sales of several others, but we don't own any others.
Q. How long have you been in the business of sales and distribution of forest products in the Northwest?
A. Oh, for about 22 years.
Q. Except for this connection with this Cascadia, your business entirely is lumber wholesaling?
A. Yes.
Q. How do you handle the sales which you make to the [fol. 2166] ultimate consumer, the buyer?

A. You mean how do we sell it?

Q. Yes.

A. We work through commission men and wholesalers in the east. Some sales are made directly to the retail yards.

Q. What is the source of your supply for sales of lumber?

A. We have buyers calling in Oregon and Washington, buying from all the mills in Washington, Oregon, and northern California.

Q. Do they get over into the pine belt of eastern Oregon and Washington?

A. Yes, we do some.

Q. How far south do you go in California?

A. Oh, down about as far as Ukiah.

Q. You've lost me. How far is that south of the California line?

A. It's about a hundred miles north of San Francisco.

Q. How is your business divided between species—between, we'll say, fir and pine?

A. We handle about 95 per cent fir, and about 5 per cent pine.

Q. You have heard the discussion around here about the difference between a firm car and a transit car. Do you do business with firm cars or transit cars, or a combination of both?

A. We do a combination business.

Q. Can you tell us approximately how much of your business is firm business and how much is transit business?

A. I'd say we do about 20 to 25 per cent transit business, [fol. 2167] the balance firm.

Q. Coming to the Cascadia Company for a minute, does the product of that mill as a rule move by rail?

A. No. The majority of it moves out by water.

Q. Immediately offshore from Toledo?

A. Yes, we barge it down to Newport.

Q. And aside from that which moves export, approximately how many cars a year do you handle as a wholesaler?

A. Oh, I don't have the records here, but I'd say between 8 and 9 hundred cars a year.

Q. Of the product which you sell as wholesaler, can you give us any estimate of the percentage of your product which is procured in Oregon?

A. I imagine about 80 to 85 per cent is secured here in Oregon.

Q. How far south do you go in Oregon?

A. We go down as far as Roseburg. We go to the California border, but most of it down around Roseburg and north.

Q. Between the Columbia River and Roseburg?

A. Yes.

Q. Such pine as you do sell, where do you get that from?

A. Out of central Oregon, Bend, Prineville, and mostly in that area.

Q. Do you get over at all into Idaho and Montana?

A. Very little.

Q. Now, in the sale of your products, can you tell us how [fol. 2168] it's divided? Do you sell east of Chicago?

A. Yes, we sell east of Chicago.

Q. Approximately how much of your product goes east of Chicago, to the east and the southeast of the United States?

A. I'd guess about 25 or 30 percent goes east.

Q. And the balance then would be west of Chicago?

A. Yes, sir.

Q. In what areas of the United States? How would you classify the areas of the United States west of Chicago in which you sell?

A. Well, a good deal of our sales go into Minnesota, Iowa, Nebraska, into Texas and Missouri, Kansas.

Q. Do you sell in Illinois and Wisconsin?

A. Illinois, Wisconsin, and Indiana too.

Q. That's east of Chicago. Do you sell in Missouri?

A. Yes, we do.

Q. North and South Dakota, Kansas, Nebraska?

A. Yes.

Q. Well, taking that group of states, Illinois, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska and Kansas, about how much of your output—how much of your sales goes into that territory?

A. Oh, an offhand guess, I'd say about 50 per cent.

Q. All right. You sell about 30 per cent or thereabouts east of Chicago, and about 50 per cent in those states. That

leaves about 20 per cent left. Where does that 20 per cent go?

[fol. 2169] A. That would go down, I'd say, to the southwest states.

Q. Including Texas?

A. Texas and Arkansas, Oklahoma.

Q. Oklahoma and Arkansas?

A. Yes.

Q. Have you ever compiled a statement for your company showing the distribution of your sales by states in the United States for any period?

A. No, we haven't.

Q. Do you do any business with mills on the Santiam Branch of the Oregon Electric?

A. Yes, we do.

Q. Before you on the table is a map, which was introduced in evidence yesterday by Mr. Ehlen, and, when the map was put in, he described the present application of rates from the SP&S to points on the Milwaukee east of Mobridge, and particularly from the Vernonia area to points on the Milwaukee between Mobridge and Missoula.

Have you seen a copy of that before, have you?

A. Yes, I have.

Q. And was that described to you in some previous conference?

A. Yes.

Q. Who described it to you?

A. Mr. Ehlen.

Q. Looking at the map, and particularly the area of the [fol. 2170] stations colored in blue, which you will notice starts not far from the Iowa-South Dakota line, do you do business in that area colored blue and points west thereof local to the Milwaukee?

A. We do some.

Q. Have you ever had any trouble getting into that territory via the Milwaukee from SP&S stations?

A. Off the Santiam Branch, we have.

Q. Off the Santiam Branch you have had trouble?

A. Yes.

Q. Are you a rate expert?

A. No, I'm not.

Q. Who does the routing of your carloads?

A. We have the person making the sales do the routing. We have a rate book put out by the West Coast Lumbermen's Association that we refer to, also call the railroads for guidance.

Q. Are you generally familiar, not as a rate expert, but as one engaged in the lumber business, are you generally familiar with the railroads out of the states of Oregon and Washington into the eastern territory?

A. Yes.

Q. From points on the SP&S, excluding for the moment the—well, including the Santiam Branch, what routes are available to get to Minnesota Transfer and the interior states immediately around the state of Minnesota?

A. From the SP&S?

[fol. 2171] Q. From the SP&S.

A. We can route it SP&S to Spokane, and take it Great Northern or Northern Pacific to Minnesota Transfer.

Q. Now, how do you get to the southwest, Texas and such portions of the United States?

A. Off the Oregon Electric and SP&S?

Q. Yes.

A. We'd go down OE, GN, WP, or take it down through Laurel, CB&Q, down in through that way.

Q. What is it, do you know, the common designation of the route OE, GN, WP? Do you know what is the junction between the Great Northern and the Western Pacific?

A. It's Bieber.

Q. And that's sometimes called the Bieber route?

A. The Bieber gateway.

Q. The Bieber gateway. Do you buy from mills located on the Southern Pacific?

A. Yes.

Q. And do you ship via the Southern Pacific?

A. Yes.

Q. In general, what routes do you find available for shipments on the Southern Pacific?

A. Well, there's various ways you can ship it—SP, UP, then lines beyond there; SP, D&RG, and various lines beyond there too.

Q. Are you familiar with the route of the Union Pacific [fol. 2172] in connection with the Milwaukee to territory back in the middle west?

A. Yes.

Q. What's that junction?

A. SP, UP, Marengo.

Q. Now, these routes that you have enumerated, do you use from time to time all of these routes?

A. Yes.

Q. Are you generally familiar with the rate structure portrayed on that map, applicable from points on the SP&S to Milwaukee local points?

A. I'm generally familiar with them.

Q. When I say "that map", I'm speaking of the same map which is here in evidence as Exhibit 28. Would you like to have rates from the Santiam Branch of the Oregon Electric on the same basis as apply from Oregon Electric main line points, such as Albany, Salem and Eugene, to local points on the Milwaukee east of Mobridge?

A. It would be a big help.

Q. You have occasion to ship into that territory?

A. Yes, we do.

Q. Does your firm engage in the business of putting in a part load and moving to a point where you complete the load, and thence move on east to the ultimate markets?

A. We do some of that business.

[fol. 2173] Q. How extensive is it? How many would you do in a year or in a month ordinarily? Or any other period.

A. Oh, maybe a couple cars a month.

Q. On those cars, where are they usually started and what goes in them to begin with?

A. We usually start with fir on the Oregon Electric or Southern Pacific and stop over in central Oregon to pick up pine. We can send them up into—around Seattle, Everett, to pick up shingles or cedar siding, and ship on east.

Q. On cars that are started with fir and completed with pine, do you have any trouble under the present rate structure for finding a source of pine at which you can complete loading through which the through rate applies to the east?

A. No, we haven't had any trouble on that.

Q. Did you ever hear of the St. Maries Lumber Company?

A. Yes.

Q. Did you ever stop a car at St. Maries to complete loading?

A. No.

Q. Does your company engage in the practice of starting a car out billed to one destination for part unloading with directions to take it to another destination to complete unloading?

A. Yes.

Q. How frequently does that happen?

A. Oh, that's another infrequent one, maybe two or three cars a month.

[fol. 2174] Q. Have you ever had any experience of a rejection by the purchaser at the billed destination of a carload shipment which required diversion of that car to a destination—to another destination for disposal of the car?

A. No; no, we haven't.

Q. Have you ever had a sale where some question was raised by the receiver of the lumber where a dispute was settled with the original customer, or the car was disposed of at the destination to which originally billed?

A. Of course, every shipper or wholesaler runs into cars that are rejected, and we've had that. Most of the times, you can either make a settlement or sell it to somebody else in the same town.

Q. But you can't remember of any instance where you had to divert to another destination?

A. No; no, we haven't.

Q. If the rates are published from the Santiam Branch to Milwaukee local destinations east of Spokane on the same basis as now apply from the Oregon Electric main line points, then—well, let me preface that.

Do you know what the Milwaukee is asking for in this case, the general nature of the rates they ask for?

A. Yes.

Q. Just give us your understanding of what they are asking for. We're not going to hold it to you as a legal state-

[fol. 2175] ment, but just your general understanding.

A. The way I understand it, they're asking for the same privileges as what the Northern Pacific and Great Northern have from Spokane going on east.

Q. To eastern destinations?

A. Eastern destinations.

Q. Would the addition of that route, as requested by the Milwaukee, be of any assistance to your company in the marketing of your products?

A. I don't believe it would.

Q. If the rates are published from the Santiam on the basis that I described a moment ago, would the existing rates, so supplemented by rates from—existing routes, so supplemented by the routes from the Santiam Branch be adequate to take care of all your requirements as a lumber wholesaler?

A. Yes.

Q. Is the Milwaukee route as requested necessary to assist you in handling any problem relating to stops to complete loading, or stops for partial unloading, or for the disposition of rejected cars?

A. No.

Q. You buy from this entire western area that you described, particularly from the Oregon area west of the Cascade Mountains, and some from Oregon areas east of the Cascade Mountains. Have you been familiar with the car [fol. 2176] supply situation on the various lines serving Oregon in the last few years?

A. Yes.

Q. What has been your experience with respect to the car supply by the SP&S at points which it serves, including the Oregon Electric and Oregon Trunk?

A. It's been very good.

Q. You say you're familiar with the car supply situation generally of all carriers serving the timber area in the states in which you do business.

Mr. Maguire: That was not his answer as I recall it.

Mr. Rockwood: Yes, he said he was.

Mr. Maguire: In the state of Oregon; not in the states. Don't put words in the witness' mouth.

Mr. Rockwood: I'll try to reframe it, Mr. Maguire. Thank you very much for correcting me.

By Mr. Rockwood:

Q. Are you familiar with the car supply on the roads in Washington?

A. Mostly Oregon.

Q. Mostly Oregon. You have had some experience in Washington?

A. Yes.

Q. All right. Limiting it to Oregon, what are the principal railroads serving Oregon?

A. Well, the Southern Pacific, the Oregon Electric, SP&S, and Union Pacific.

Q. Has the—I just want a general characterization of the [fol. 2177] car supply on the SP&S compared with other roads. Has it been better, or worse, or about the same, or what?

A. Down through the Valley, the SP&S has always been better during a car shortage than the Southern Pacific.

Q. I suppose in periods when there is no car shortages—well, during a period when there's no general car shortage, are you able to distinguish any difference in the matter of car supply on the different roads?

A. No, I don't think so.

Q. Well, in periods of car shortage, there may be a difference on one road compared to the other?

A. Yes.

Mr. Rockwood: You may cross examine.

Cross examination.

By Mr. Maguire:

Q. Mr. Miller, during car shortages, even taking into consideration the fact that the SP&S is in your experience capable of giving better service than some of the other railroads, do you get 100 per cent of the cars supplied from the SP&S in time of car shortage, or do they sometimes get up against it too?

A. They sometimes get up against it too, and it's a little slower.

Q. Sure. Now, then, you mentioned the fact that you do occasionally use the Union Pacific routing through Marengo,

thence Milwaukee. Do you know what destination territory [fol. 2178] can be reached under those rates?

A. No, I can't say that I do.

Q. In other words—I don't want to beat this subject to death with you. If you don't know, I won't ask you whether you know this or that. You just don't know anything about it?

A. That's right.

Q. All right, then, we won't pursue that. Now, then, does the Cascadia Lumber Company also have a mill in Sweet Home, Oregon? I didn't hear you mention that.

A. We sold that here about in December of last year. The mill has been closed down since October of 1943.

Q. Oh, I see. 1943 or '53?

A. '53—excuse me.

Q. Now, then, this 800 or 900 cars per year handled as a wholesaler, does that include any cars at all from the Toledo mill of the Cascadia Lumber Company, or is that all offshore movement? I wasn't quite certain about that.

A. I imagine in those figures there might be about 25 cars. That's about all we shipped out of there by rail.

Q. Well, I may be repeating some of this, but do you—aside from that 25 cars or so that went by rail, this 800 to 900 cars were procured by your firm from other than your own production sources, is that right?

A. Yes.

Q. Now, I wonder if you could split this up a little bit. [fol. 2179] Could you give me any estimate as to what percentage of the 800 to 900 cars, minus 25, you buy on and ship from points on the SP&S System, the Oregon Electric, Oregon Trunk also, all SP&S properties?

A. I don't have a record of that.

Q. Just an estimate if you can give me one.

A. About half of it say.

Q. About half of it? You get half of the 8 or 9 hundred cars, less the 25, that you buy at points served by the SP&S?

A. Yes.

Q. Now, your transit operations which run from 20 to 25 per cent of your total, is that a year-in and year-out average, or does it vary according to season?

A. It varies according to season.

Q. In what seasons of the year—is that climatic seasons, rather than financial seasons?

A. It's a matter of choosing when the best market is.

Q. Yes. Well, then, when do you get into the transit business? On a rising, or on a falling market?

A. It's usually on a rising market.

Q. And why do you turn to transit operations during a rising market? Will you give us the reason for that?

A. I might qualify my previous statement, if I may. We're in the transit business, I might say, as a matter of being forced to. We have certain small mills that haven't the [fol. 2180] capital to accumulate lumber to ship specified lumber, and, as soon as they accumulate a car of lumber, we ship it out, and we sell it in transit.

Q. I see.

A. Of course, we do—we have the transit cars that are coming out week after week, and then we do accelerate it by buying from other mills when the market does pick up.

Q. Yes. Well, now, let's follow about these little mills. For example, some of these little mills put out a type of lumber or an assortment of specifications that's hard to match with a firm order, I suppose, so you've got to throw that out onto the markets to dispose of the transit cars? Is that the theory of that, the reason for it?

A. Yes.

Q. And then as to other mills which are capable of supplying the lumber in the proper dimensions, specifications, and species, and so forth, to make up firm orders, nevertheless, when the market gets pretty crisp, you like to have a car up close to the market so you can take that close to the selling points, so that you can pick up any velvet that's going around in the matter of higher prices? That's the ordinary practice?

A. That's right.

Q. And the backbone of your business, however, I gather, is your firm sale business?

A. That's right.

[fol. 2181] Q. And that's the type of business that you prefer to engage in if you can?

A. That's right.

Q. Less that extra worry?

A. That's right.

Q. Also, you sleep much better nights, don't you?

A. Yes, with less worries.

Q. Now, then, disregarding for the moment any comparative statements or considerations, under the impression and the explanations you have received of the Milwaukee proposal, do you know what parts of the country you could reach if the Milwaukee got its rates by way of the Oregon Electric or SP&S to Spokane, thence Milwaukee, what part of the country—part or parts of the country you could reach under the Milwaukee proposal? Have you any information on that?

Mr. Rockwood: Excuse me. May I have that question read?

(Question read.)

Mr. Maguire: I'll rephrase that.

By Mr. Maguire:

Q. It's understood that the Milwaukee proposal involves joint rates off the SP&S System by way of Spokane, thence Milwaukee. You understand that?

A. Yes.

Q. With the cart before the horse?

A. Yes.

Q. Now, then, without regard to any comparative situa-
[fol. 2182] tions or anything of that sort, but just simply looking at the proposal itself, has it been explained to you, or do you know what part or parts of the United States could be reached under the through rates which would result if the Milwaukee proposal were allowed?

A. I understand that the parts marked here in green, blue and yellow would be allowed in the Milwaukee rates, and also east. The Milwaukee would be intermediate.

Q. Pardon?

A. The Milwaukee would be an intermediate railway between Spokane to the Minnesota Transfer and over to the eastern gateway, and also these points in green, blue and yellow, we'd be able to get to.

Q. And is it your understanding that that is the extent of the territory that would be opened up?

A. As far as I know.

Mr. Maguire: That's all. Thank you.

Redirect examination.

By Mr. Rockwood:

Q. Well, when you say, Mr. Miller, that the Milwaukee would be an intermediate carrier, what in your mind is your concept of the Milwaukee being an intermediate carrier?

Mr. Rockwood: His answer was perfectly complete, and you attempted to shade it.

Mr. Maguire: If you don't understand it, ask your own questions.

Mr. Rockwood: I have asked the question.

[fol. 2183] By Mr. Rockwood:

Q. What would be the consequence of the Milwaukee being an intermediate carrier between Spokane and eastern gateways as to the portion of the country that you could reach via the Milwaukee?

A. It would replace the Northern Pacific and the Great Northern, as I understand it.

Q. And to reach the same territory that can be reached via that route?

A. Yes.

Mr. Rockwood: That's all.

Recross examination.

By Mr. Maguire:

Q. What do you mean by the same territory that can be reached via that route, as you just answered Mr. Rockwood? What territory are you talking about?

A. The points here in blue and yellow.

Mr. Maguire: Thank you. That's all. Do you want to ask him again now?

Mr. Rockwood: Yes, I'm going to ask him some more.

Redirect examination.

By Mr. Rockwood:

Q. Let's see if you understand the question. What territory can now be reached via the Great Northern and Northern Pacific via Minnesota Transfer by any tariff routes that may be used in connection therewith, via the northern lines to Minnesota Transfer?

A. You mean off the Santiam Branch?

[fol. 2184] Q. No. The whole darn package of goods.

A. Well, you could—repeat that again.

Q. What territory can now be reached via the route from the SP&S to Spokane, thence one of the northern lines to Minnesota Transfer, and thence some other line? What territory can now be reached via those routes?

A. The whole east.

Mr. Rockwood: That's all.

Exam. Dishman: Is that all?

Mr. Maguire: Well, now, wait a minute.

Recross examination.

By Mr. Maguire:

Q. Is it your understanding that, if the Milwaukee proposal is granted, that you can reach the whole east via the Milwaukee and the Minnesota Transfer?

Mr. Rockwood: Well, let me—

Mr. Maguire: Just a minute. I want to find out what this witness knows about it.

The Witness: Repeat that again, please.

By Mr. Maguire:

Q. Is it your understanding that, if the Milwaukee proposal is granted, that you can reach the whole United States if the Milwaukee hauls to the transfer?

A. It would be an added route, to that extent.

Q. Well, then, maybe both of us got ourselves crossed up. What was this talk about the yellow territory in here shown on Exhibit 28?

[fol. 2185] A. I thought you were asking what the Milwaukee could reach into.

Q. Under the proposal?

A. Yes.

Q. Is it your understanding you can reach it now?

A. You can reach it now, yes, by going into Minnesota Transfer, then Milwaukee.

Q. Oh. Is it your understanding that you cannot reach it, this yellow territory, from the SP&S by giving it to the Milwaukee at Spokane?

A. Off the Santiam Branch, you can't.

Q. No; I know. I'm talking about the SP&S.

A. No, it wouldn't be—you can reach that territory now.

Mr. Maguire: That's all. Thanks.

Mr. Rockwood: That's all. Thank you.

Mr. Maguire: That was a good job of rescuing him.

Mr. Rockwood: I didn't rescue him. I just had to straighten him out.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Rockwood: Call Mr. Edwards.

Martin B. Edwards was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you state your name to the Reporter, please, [fol. 2186] Mr. Edwards?

A. Martin B. Edwards.

Q. Where do you live?

A. Albany, Oregon.

Q. And what is your business?

A. I'm in the sawmilling business.

Q. What is the name of your company that's engaged in the sawmill business?

A. Edwards Brothers Construction Company.

Q. And what is your capacity with that company?

A. Manager.

Q. Where is the sawmill of your company located?

A. Albany, Oregon.

Q. By what railroad is your sawmill served?

A. Well, it's on the Oregon Electric line, and we're serviced also by the Southern Pacific.

Q. So, you have the choice out of Albany of shipping either route, Southern Pacific or Oregon Electric?

A. That's right.

Q. How long have you been in the sawmill business in Oregon?

A. Eight years.

Q. Does your company engage in the manufacture of lumber, or wholesaling, or a combination of both?

A. In the manufacture of lumber.

Q. By what general process do you dispose of the lumber [fol. 2187] you manufacture? That is, to whom do you sell, or how do you sell?

A. Entirely to wholesalers.

Q. Are they west coast wholesalers, or wholesalers in other parts of the country?

A. Well, probably 90 per cent of them are west coast, and 10 per cent are in the east.

Q. You are familiar with the distinction between a firm sale and a transit sale?

A. That's correct.

Q. In your sale to the wholesalers, your immediate sale to the wholesalers, is that an outright sale as soon as the car is loaded?

A. Yes.

Q. In the sales made by your wholesalers, do you know whether your wholesalers engage in a firm business, or transit business, or a combination?

A. Well, possibly not at the time of the sale. They, yes, transit some of the cars we sell.

Q. Are you able to estimate how many of the cars are handled as firm cars by your wholesalers, and how many or what percentage are handled as transit sales by the wholesalers?

Mr. Maguire: Before you answer, please.

Mr. Examiner, I believe that it would be appropriate at this time—I don't think that we want to fill the record with hearsay testimony—I would like to ask the witness a couple [fol. 2188] of questions to see whether he is qualified to give the information Mr. Rockwood has requested.

Mr. Rockwood: The question at the moment is: Does he know?

Mr. Maguire: Yes, I know, but you have asked him another question here as to wholesalers who transit and others who make firm sales, and I think, before I move to strike that on the ground it might be hearsay, I should be allowed to go into that.

Exam. Dishman: All right, proceed.

Mr. Maguire: Mr. Edwards, do you know of your own knowledge—when I say "your own knowledge", that means not what somebody else tells you—what the practice is of your wholesalers? Do you have any documents, for example, from which you can determine what they are doing?

The Witness: Well, yes. On the actual routing of the cars, we can only tell where a car will transit. If they're a firm order, we definitely have a name and know exactly where they're going to. If it's a milling in transit order, why—

Mr. Rockwood: Selling in transit, not milling in transit.

The Witness: A selling in transit order, it's indefinite.

Mr. Maguire: That is, it's billed to themselves possibly?

The Witness: That is the practice, yes.

Mr. Maguire: And is it your observation of those bills of lading that—it's upon your observation of those bills of lading that you base the conclusion?

The Witness: That's correct.

[fol. 2189] Mr. Maguire: That's all right. Go ahead.

By Mr. Rockwood:

Q. Do you see the freight bills on those cars eventually?

A. Almost invariably. They eventually come back to us.

Q. Do you on any occasion examine the freight bills and compare the bills of lading to see whether there has been any change?

A. Well, I don't, but our bookkeeper does.

Q. All right. Can you tell us now of your cars sold to wholesalers approximately what percentage of them are sold firm by the wholesalers and what percentage are sold as transit cars by the wholesalers?

A. Well, it's awful hard to say over a year's time, but I would guess roughly that 60 per cent of my business is firm, maybe 70 per cent, and the other is 30 to 40 per cent.

Q. How many cars are shipped out of your mill in a year's time?

A. It's between 7 and 8 hundred cars.

Q. How would you describe the products which you manufacture and sell? Is it green lumber, or dry lumber, or what species?

A. We sell the green and the dry lumber both, and we also sell the hemlock and the fir.

Q. Would you characterize it as dimension lumber or some other class?

A. I would say basically it's dimension lumber.

Q. Can you tell us in what area of the United States your sales are made, sales of your products?

[fol. 2190] A. Most of our sales are made east of—oh, into the $1.30 rate.

Q. You say most of them. What is your estimate, percentagewise, of how much goes into that $1.30 rate territory?

A. Well, without actually getting down to a figure, which I don't have, but just an estimate it's somewhere between—it's as much as we possibly can due to the fact that we gain quite a bit of underweights, but I would say roughly 80 or 90 per cent of our cars go back east.

Q. Do you sell any in the middle west, in the states of Illinois, Wisconsin, Minnesota and Iowa, any of the remainder?

A. Yes, we sell some in there, yes.

Q. What do you mean by the $1.30 territory? Can you tell the limits of that area?

A. Well, not offhand I can't exactly explain the limits to you because we're not—we don't bother too much with the rates because we sell almost all of our lumber at the mill, but there is a blanket rate to the eastern states—that is the $1.30. I don't know exactly where the boundaries is.

Q. Do you have in your office a copy of the West Coast Lumbermen's map showing the application of rates?

A. Yes, we do.

Mr. Maguire: In order to save time, I'm willing to tell the witness right now that area. It's east of the Indiana-Illinois state line, north of the Ohio-Potomac Rivers, if [fol. 2191] that will help you any, and speed it up.

Mr. Rockwood: That will help a whole lot.

Mr. Maguire: Let's call it that.

Mr. Rockwood: I knew he knew the general territory, but just what the particular boundary was, I didn't know if he knew that, and apparently he wasn't sure of that. Thank you very much.

Mr. Maguire: Surely.

By Mr. Rockwood:

Q. So, am I correct in assuming that 80 or 90 per cent—I think those were the figures—are sold in the territory east of the Indiana-Illinois state line and north of the Ohio River?

A. That's right.

Q. You have before you on the table a map, which was presented by Mr. Ehlen here yesterday. Do you see certain local points of the Milwaukee colored in blue on that map, beginning on the eastern boundary close to the Iowa-South Dakota state line?

A. Yes.

Q. Do you sell any in that area colored blue and west thereof between the blue area and Spokane on the Milwaukee?

A. No, virtually none.

Q. Will you enumerate the routes available to you at your mill at Albany for handling lumber out of your mill?

A. There are six or seven of them, I think. There's the OE, SP&S, NP; the OE, SP&S, GN; the OE, SP&S, WP—

Q. That's the Great Northern route to Bieber?

[fol. 2192] A. Yes, and there's the—there's a peculiar one up around Lake Superior there, I can't recall—SP, UP. There's probably even a couple more I can't think of right now.

Q. Have you any route via Marengo, Washington? Are you familiar with that route? Can you tell us what it is?

A. Well, I know we shipped several cars that way, but right offhand what the routing is, I can't tell you. The name "Marengo" certainly fits in, as I recall.

Q. Do you use any of these routes to an extent any greater than you use any others?

A. Well, yes, we use the Oregon Electric, SP&S, NP to a great extent. I would say that's our strongest route now.

Q. How about—how does the use of the SP&S, Great Northern, Minnesota Transfer, compare, we'll say, with Southern Pacific, Union Pacific route?

A. Well, of course, we use the Oregon Electric, SP&S, NP and the Great Northern considerably more than we do the SP, UP.

Q. Had you seen a copy of this map, the one that's before you, prior to today?

A. Yes, I have.

Q. By whom was it shown to you?

A. Well, I can't remember the name.

Q. Do you see him in the room?

A. Yes. There.

Q. George Ehlen?

[fol. 2193] A. George Ehlen.

Q. Was a general description given you at that time on the application of the rates from the SP&S points to local points on the Milwaukee?

A. Yes.

Q. Are you a rate expert, Mr. Edwards?

A. No, sir.

Q. I've never seen one that wasn't. Does your company engage in the practice of starting out partial loads to complete loading at another point and then for movement beyond?

A. We have, but it's very limited. It all consists of the Willamette Valley; nothing beyond that.

Q. All such completed loads have occurred in the Willamette Valley?

A. That's correct.

Q. Is that fir with hemlock, or something like that?

A. That's correct.

Q. Do you engage in the practice of starting a car out to unload at one point, to go on to another point to complete unloading?

A. Well, it has been done, but very, very seldom—only at the wishes of a wholesaler.

Q. In what territory has that occurred?

A. Well, it's usually in Illinois, or points east of there.

Q. What has been the experience of your company with [fol. 2194] respect to rejected cars, or cars refused by the customer at destination, which required the movement of the car to another destination? Have you had any instances of that type?

A. Yes, one or two cars probably in the course of a year, maybe two years.

Q. Do you recall what the occasion was for the rejection on those cars?

A. Well, it constituted hemlock that was supposed to be dry. Apparently it wasn't dry enough, and it was rejected.

Q. Was that a railroad defect, or was that your fault? Do you remember what became of it?

A. I imagine in the long run it was our fault.

Q. Where did that occur? East of Chicago, or west of Chicago?

A. It happened in the New York area. We shipped it into New York and moved it on up to Boston.

Q. Do you recall any other incident of that nature at all?

A. No.

Q. In your experience?

A. No, not that I can remember offhand.

Q. Are you familiar generally with what the Milwaukee wants in this case?

A. Well, I think so.

Q. The addition of a route to handle cars with the SP&S at Spokane through to Milwaukee destinations?

Mr. Maguire: Just a moment. Just a moment. I object [fol. 2195] to that question, Mr. Examiner.

Exam. Dishman: Let the witness state it.

Mr. Maguire: Counsel is coaching the witness as to what the proposal is. He asked him if he knew. I think, if the witness knows, he should ask him a question.

Mr. Rockwood: I can ask him if he likes the color red and give him black and ask him if he likes this color.

Exam. Dishman: Well, let the witness answer just what he knows.

By Mr. Rockwood:

Q. Tell us what your general understanding is as to what the Milwaukee is trying to get in this case.

A. As I understand it, they want to get a rate, connecting at Spokane, or a joint rate, to Minneapolis and points east as far as Chicago, and possibly further east. I don't know about that.

Q. Would the addition of the Milwaukee route be of any assistance to you in marketing your products?

A. I wouldn't— I don't see how it would be.

Q. Do you have at the present time all the routes you need in order to dispose of your product?

A. The best answer I can give to that is that so far we've had no trouble absolutely whatsoever moving our product at any time.

Q. You are served by the Oregon Electric, and you also have available the service of the Southern Pacific?

A. That's correct.

Q. What has been your—you order the cars for shipment [fol. 2196] over the Oregon Electric?

A. Yes.

Q. What has been your experience with respect to your ability to get cars from the Oregon Electric to handle your shipments over that road?

A. We've never lacked for cars.

Q. On the Oregon Electric?

A. Well, at least for the last few years back.

Q. Have there been periods of general car shortage out here in the Northwest in the last three or four years on lines in the Pacific Northwest?

A. Well, apparently there has been on the Southern Pacific, but not too much on the Oregon Electric.

Q. And during the periods when there were shortages on the Southern Pacific, were you able to get cars when you wanted on the Oregon Electric?

A. Yes.

Mr. Rockwood: You may cross examine.

Cross examination.

By Mr. Maguire:

Q. Mr. Edwards, have there been periods when there was a temporary tightness of car supply on the Oregon Electric when it wasn't able to give them to you immediately? You've had some of those, haven't you?

A. Well, yes, but it couldn't have been very long. It doesn't strike my mind very much.

[fol. 2197] Q. Well, now, as you stated, you're not too much interested or involved in rates or routes because the people to whom you make firm sales at the mill are the fellows who have to worry about that, aren't they, the wholesalers?

A. Yes.

Q. And so your only contact with rates and routes is to sell the car to the wholesaler and then route it out the way he directs it and bills it?

A. That's correct.

Q. Isn't that about right?

A. Yes, sir.

Q. And so, really, the question of rates and routes is the worry of the wholesaler, rather than yourself?

A. Yes.

Q. Can you see any way in which the Milwaukee proposal would hurt your business?

A. No. No, I don't see how it would hurt it, but, on the other hand, I don't see how it would help it.

Q. Well, the reason is that your wholesalers have their particular territory in which they're dealing, and you just don't bother about rates and routes? Isn't that true?

A. That's true.

Mr. Maguire: That's all.

Mr. Rockwood: That's all. Thank you very much.

Exam. Dishman: Witness excused.

[fol. 2198] (Witness excused.)

Exam. Dishman: We'll take a short recess.

(Short recess taken.)

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Rockwood: I'll call Mr. Evans.

DUANE EVANS was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you state your name to the Reporter, Mr. Evans?
A. Duane Evans.
Q. In what business are you engaged, Mr. Evans?
A. Manufacture of plywood.
Q. What company or organization are you connected with?
A. Linnton Plywood Association.
Q. Linnton Plywood Association. What is the nature of that organization? A corporation, or what?
A. A co-op.
Q. It's a cooperative?
A. Yes.
Q. Who are the owners of the business?
A. All the workers.
Q. In your plant?
A. Yes.
Q. And what is your job in that co-op?
[fol. 2199] A. Traffic Manager.
Q. Do you have anything to do with the sales?
A. No.
Q. Do you handle the traffic out of the plant?
A. Yes.
Q. Where is your plant located?
A. Linnton, Oregon.
Q. Is that within the city limits of Portland?

A. Switching limits, yes.
Q. In the switching limits of Portland?
A. Yes.
Q. By what railroad is the plant served?
A. SP&S.
Q. Where is that plant located with respect to the city of Portland?
A. West.
Q. Does it start off on the line toward Astoria?
A. Yes.
Q. Just at the north limits of the city of Portland?
A. Yes.
Q. By switching, can you use roads other than the SP&S?
A. Yes, we use them all.
Q. You can use all roads serving the city of Portland?
A. Yes.
Q. How long have you been in the plywood distribution business?
[fol. 2200] A. About 10 years.
Q. Does your company manufacture plywood?
A. Yes.
Q. Does it act as a wholesaler for plywood manufactured by others?
A. Yes, we have a sales company.
Q. You do not wholesale plywood manufactured by others?
A. No.
Q. Through what organization is your product marketed?
A. Georgia-Pacific.
Q. Georgia-Pacific Plywood Company?
A. Plywood Company.
Q. Do you know what kind of a sales organization Georgia-Pacific has throughout the United States, or in the United States?
A. They're represented all over.
Q. On shipments of plywood out of your plant, are they firm sales to the ultimate buyer, or are they transit cars?
A. Firm sales to the buyers.

Mr. Maguire: I didn't get that last answer.

The Witness: Firm sales.
Mr. Pease: Only?
The Witness: Yes.

By Mr. Rockwood:

Q. How many cars of plywood did you ship in 1954, do you remember?
A. Oh, between 6 and 7 hundred.
Q. How would you describe your product? What is the [fol. 2201] plywood product you sell? It's wood and—describe it generally.
A. Fir plywood—Douglas fir plywood.
Q. Douglas fir plywood?
A. Yes.
Q. How are the routes—do you bill the cars out?
A. Yes.
Q. How do you select the routes over which the cars are billed? How do you, in billing the car out, know what route to use on the bill of lading?
A. We generally have a delivering carrier.
Q. Who gives you the delivering carrier?
A. The buyer.
Q. Other than the delivering carrier, what is your function in determining or in fixing or in naming the route from your plant at Linnton up to the line of the delivering carrier?
A. We reserve the right to route our own cars.
Q. You mean your co-op does?
A. Yes.

Mr. Maguire: Could I interrupt just for clarification? As I understand it, the purchaser—the only selection by the purchaser as to routing is the naming of the delivering carrier?
The Witness: Yes, he has a special interest in naming it, and we will accept his routing.

By Mr. Rockwood:

Q. Did you prepare and furnish to me a statement showing the distribution of your carload shipments by rail in [fol. 2202] the year 1954?

A. I did.

Q. Is this document that I hand you a copy of that statement?

A. Yes.

Mr. Rockwood: I would like to have marked for identification as Exhibit No. 34 the statement referred to by the witness.

Exam. Dishman: Exhibit 34.

(Defendant's Exhibit No. 34, Witness Evans, was marked for identification.)

By Mr. Rockwood:

Q. Is this statement just marked for identification as Exhibit 34, showing a total of 641 cars, a correct statement of your distribution in the year 1954 out of your plant at Linnton?

A. Yes.

Q. On the table before you is a copy of a map, which is in evidence in this case, showing particularly the system of the Milwaukee between Spokane and Chicago with various stations colored in different colors. I call your attention to this area which is in blue, the eastern boundary of which is close to the Iowa-South Dakota line, Iowa-Nebraska line.

Do you market any plywood at points local to the Milwaukee?

A. Yes.

Q. In that area shown in blue and west thereof to Spokane?

A. A few.

Q. How extensive is your marketing there?

[fol. 2203] A. Very small.

Q. I notice in the year 1954 there were three cars to the entire state of North Dakota—South Dakota, I mean, four cars to the state of Montana, one car to the State of Idaho. What is the reason for the relatively small number of cars shipped into those three states by your company?

A. We just don't have a market for them there.

Q. Do you know whether or not there is any substantial market for plywood in those states?

A. Well, I wouldn't answer that. I don't believe so.

Q. But you have no market in that area?

A. No.

Q. What are the routes commonly used by you in the shipment of plywood out of your plant at Linnton?

A. SP&S, GN or NP. We divide the business to Minnesota Transfer. The California lines, SP, GN, WP. Some cars go UP.

Q. Some cars go UP?

A. Very few.

Q. Where to?

A. Oh, various points. We had one here just very recently.

Q. Do you ship via the Union Pacific, Omaha?

A. I don't remember just where it went. We very seldom ever ship them.

Q. Have you made any shipments to local points on the Milwaukee shown in blue and yellow on that map?

[fol. 2204] A. Yes.

Q. Local points?

A. Yes.

Q. Have you ever used a route SP&S to Spokane, and the Milwaukee, to those Milwaukee points?

A. Yes.

Q. Have you ever used the route via Marengo, Washington?

A. No, sir.

Q. Are there any routes which apply via the Great Northern or Northern Pacific, Minnesota Transfer, via ferry routes across Lake Michigan?

A. Yes.

Q. Have you ever used such routes?

A. Yes.

Q. Have you ever—you say you've never used the Marengo route?

A. No.

Q. Generally, can you give us an idea of how your business is divided between the SP&S and northern lines routes,

Great Northern and Northern Pacific, Minnesota Transfer, and routes which include the Southern Pacific and Union Pacific?

A. I could, yes.

Q. Generally, how is it split between the northern lines routes and routes including the Union Pacific and Southern Pacific?

A. Well, the Southern Pacific and the Union Pacific, we have very few cars via that—most generally the northern lines.

[fol. 2205] Q. Most of your business goes via the northern lines?

A. That's right.

Q. Great Northern and Northern Pacific?

A. Yes.

Q. Do you ever stop a car, a partially loaded car, stop it at some point beyond to complete loading?

A. Very seldom.

Q. Are cars ever brought into your mill partially loaded for completion of loading?

A. Yes.

Q. From what source do those cars come when you do that?

A. From the SP.

Q. Southern Pacific?

A. Yes.

Q. From what part of Oregon?

A. Corvallis.

Q. Corvallis on the Southern Pacific?

A. Yes.

Q. Are those loaded with fir lumber, or plywood, or what?

A. Hardboard.

Q. Hardboard?

A. Yes.

Q. What is hardboard?

A. Fibreboard—either one.

Q. Loaded with either plywood or hardboard?

[fol. 2206] A. Yes.

Q. Is hardboard a wood product?

A. Yes, it's made of wood chips.

Q. Made of chips and pressed into a board?

A. Yes.

Q. Except for that, you've had no experience in your company with stops to complete loading?

A. No.

Q. Do you ever bill cars out to a point with directions to partially unload and then take the balance of the load on to another destination?

A. Yes.

Q. How frequently does that occur?

A. Oh, two or three a month.

Q. At what points is that type of business done?

A. Oh, generally back east, New Jersey, New York area.

Q. Do you do any of that kind of business in the middle west?

A. No.

Q. Do you do any of that type of business west of Chicago?

A. Not that I can remember of.

Q. What has been the experience of your company with respect to the rejection of cars at destination? Have you had that happen?

A. No.

Q. Have you a general understanding of what the Milwaukee seeks in this case by way of additional routes?

[fol. 2207] A. Yes.

Q. What is your understanding of it?

A. They want the same rates that the GN and the Northern Pacific have through the Minnesota Transfer and beyond.

Q. And beyond?

A. Yes.

Q. Would the addition of that Milwaukee route be of any assistance to your company in the marketing of your product?

A. Not that I can see, no, none whatsoever.

Q. Are your present existing routes available to you sufficient to adequately enable you to market your entire product without any difficulty?

A. Yes.

Q. If the route via the Milwaukee were established via Spokane and thence Minnesota Transfer and the Milwaukee connections beyond, would you use the route?

A. Oh, I don't see why I should.

Q. How would you continue to do business?

A. The same as I am now.

Q. When did your plant start operations?

A. In 1951.

Q. You say that most of your shipments are via the SP&S. From whom do you order your cars for those shipments?

A. The SP&S.

Q. What has been your experience with respect to your [fol. 2208] ability to get cars to handle your business as you need them?

A. We have no trouble.

Q. Do you use double door cars?

A. Yes.

Q. Have you always been able to get the double door cars as you need them?

A. Oh, very seldom that we have to take single doors.

Q. There have been some occasions when you ordered double doors that you got a single door?

A. Yes.

Q. But those occasions are not numerous?

A. No.

Mr. Rockwood: You may cross examine.

Cross examination.

By Mr. Maguire:

Q. Let's look at your Exhibit No. 34, Mr. Evans. Have you got a copy of that before you?

A. Yes.

Q. That exhibit shows that during the year 1954 you only shipped five cars into Iowa, doesn't it?

A. Yes.

Q. Iowa is a fairly heavily populated state, isn't it?

A. Yes.

Q. You only shipped eight into Minnesota. That is one of the heavily populated middle western states, is it not?

A. Yes.

[fol. 2209] Q. I believe Mr. Rockwood has mentioned four to Montana and only one to North Dakota and three to South Dakota. Now, would you say, in view of the fact that Iowa only had—you only shipped one more car to Iowa, that is, five cars, than you did to Montana, which was four cars, that there is not much of a market in Iowa?

A. There isn't for us.

Q. Yes, but I mean for plywood?

A. I didn't say plywood. I mean for our sales.

Q. For your sales?

A. Yes.

Q. In other words, you haven't or your sales agency, or whoever is handling your sales, has not gotten into that territory?

A. They have not.

Q. But you do not want to imply, Mr. Evans, that there is no substantial market for plywood in these states to which you ship very few cars, do you?

A. No.

Q. I just wanted to get that straightened out. Well, now, on your shipments from Linnton, you, of course, have direct access to both the Great Northern and Northern Pacific for your switching arrangements through the Portland district, don't you?

A. Yes.

Q. Do you route many cars to Minnesota Transfer and east via Great Northern and Northern Pacific direct?

[fol. 2210] A. No.

Q. You give the SP&S a haul how far?

A. To Spokane.

Q. In all cases?

A. Well, I won't commit myself to that, but most cases.

Q. Yes. Do you never—would you want to say that you never give a car to the Northern Pacific or Great Northern for points beyond Minnesota Transfer west of Spokane? You wouldn't want to say you never give them anything west of Spokane?

A. No.

Q. I want to ask you something about the Georgia-Pacific Plywood. Is that an affiliate, or is that just simply an organization with which you have contractual relations?

A. We have a sales contract.

Q. You have a sales contract with them. Have they contracted with you for the entire output of your mill?

A. Yes.

Q. And so the search for markets and the selection of markets in which your product will be sold is dependent entirely on the judgment of the Georgia-Pacific Plywood, isn't it?

A. Yes.

Q. And do I understand correctly that in all cases the Georgia-Pacific merely indicates to you the line which they have deliver each shipment?

A. I didn't say in all cases. I said most cases.

[fol. 2211] Q. Oh, in most cases?

A. Yes.

Q. And in other cases, do they designate the routing for you?

A. Yes.

Q. Complete routing?

A. Yes.

Q. And do you follow their instructions on that?

A. Yes.

Q. Well, the Georgia-Pacific really markets most of your output in California—that's your biggest single state, isn't it?

A. Yes.

Q. And, of course, that does not involve any transportation involved in the case we're hearing here?

A. No.

Q. Then the other points to which there are—then there's the state of Washington which is not involved in this case either, is it, movements to the state of Washington?

A. No.

Q. That's 41 cars, and the other markets areas which the Georgia-Pacific has picked out are mainly in the territory eastward and beyond Minnesota Transfer, are they not?

A. Yes.

Q. In looking at the pattern of your business here?
A. (Nodding).

Mr. Rockwood: The witness is nodding, and I don't know [fol. 2212] if the Reporter can get that.
Exam. Dishman: Speak up, please.
Mr. Maguire: Will you read the last question, please?

(Question read.)

The Witness: Yes.

By Mr. Maguire:

Q. But when you look at the pattern of your business, that isn't the pattern that your company establishes at all, is it?
A. No.
Q. And so within the requirements of your agreement with that concern, they have contracted the entire output of your mill, and you have no trouble at your plant under the present rates in routing shipments accordingly, have you?
A. No.
Q. That's really the sum total of your testimony, is it not?
A. Yes.

Mr. Maguire: That's all.

Redirect examination.

By Mr. Rockwood:

Q. How do you ship to California? How do you route it to California?
A. Some SP; some GN and Western Pacific and AT&SF.
Q. What are these Washington cars? Are they—where are they sold?
A. Pasco and Spokane mostly.
Q. Do you know what the junction of the SP&S and the [fol. 2213] Northern Pacific is?
A. Yes.

Q. Where is it?
A. Pasco.
Q. At Pasco?
A. Yes.
Q. Mr. Maguire asked you if all cars moved SP&S to Spokane. Now, on Northern Pacific cars, do you know where they are received by the Northern Pacific?
A. At Spokane.
Q. All of them at Spokane?
A. Yes.
Q. Are any received at Pasco that you know of?
A. Not if they go beyond.
Q. You bill them right straight through to Spokane?
A. Yes.

Mr. Rockwood: Thank you very much.
Exam. Dishman: Is that all of this witness?
Mr. Maguire: I have nothing.
Mr. Rockwood: That's all I have.
Exam. Dishman: You're excused.

(Witness excused.)

Mr. Rockwood: Call Mr. Daubenspeck.
Exam. Dishman: Do you want to offer that exhibit in evidence?

[fol. 2214] OFFER IN EVIDENCE

Mr. Rockwood: Yes, I offer Exhibit 34.
Mr. Maguire: No objection.
Exam. Dishman: Received.

(Defendant's Exhibit No. 34, Witness Evans, was received in evidence.)

FRANK DAUBENSPECK was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you state your name to the Reporter?
A. Frank Daubenspeck.
Q. Spell it for him.
A. D-a-u-b-e-n-s-p-e-c-k.
Q. Where do you live, Mr. Daubenspeck?
A. White Salmon, Washington.
Q. In what business are you engaged?
A. Lumbering, sawmilling.
Q. What is the name of your organization?
A. S-D-S Lumber.
Q. Is that a corporation or a partnership?
A. A partnership.
Q. Are you a partner of that firm?
A. Yes.
Q. And what is your immediate responsibility with respect to business of the S-D-S Lumber Company?
A. I am the Sales Manager.
[fol. 2215] Q. Where is the—that's a sawmill?
A. At Bingen, Washington.
Q. And the plant is located at Bingen, Washington?
A. At Bingen.
Q. By what railroad is it served?
A. The SP&S.
Q. It's served by no other railroad, other than the SP&S, is it?
A. That's right.
Q. How long have you been in the lumber business, Mr. Daubenspeck?
A. Well, in this operation about 8 years—going on 8 years.
Q. Well, altogether how long have you been engaged in the lumber business in the Northwest?
A. About 30 years.
Q. Does your company manufacture lumber?
A. That's right.

Q. Does your company wholesale products manufactured by others?

A. Yes.

Q. Are you in the wholesaling business?

A. No, we're not.

Q. When you say you sell some—

A. We don't actually sell it. We buy it and sell it.

Q. You buy—how extensive is that?

A. From one mill. We take in his lumber along with ours.

Q. Where is that mill located?

[fol. 2216] A. It's located about seven miles out of Bingen.

Q. Up away from a railroad?

A. Yes. It's trucked in.

Q. It's trucked in to Bingen, and then you sell it with yours?

A. Yes.

Q. Whose mill is that?

A. The Reese-Stevenson Lumber Company.

Q. The Reese-Stevenson Lumber Company?

A. Yes.

Q. But except for that, you don't engage in wholesaling?

A. No, we don't wholesale.

Q. How do you sell your lumber? Do you have a sales organization, or do you sell through brokers, or how?

A. I sell it through brokers mainly.

Q. Where are they located? West coast or—

A. West Coast and Denver mainly.

Q. You have a wholesaler in Denver to whom you sell?

A. Yes, we have three or four of them there.

Q. You've heard the discussion here of the difference between firm cars and transit cars?

A. Yes, sir.

Q. Your sales to wholesalers, ar they outright sales that you get paid off when the car moves?

A. Yes, that's right.

Q. Now, your wholesalers, as they sell, do you know [fol. 2217] whether they engage in transit business, or, on the other hand, sell cars firm?

A. Well, occasionally.

Q. Occasionally what?

A. They sell them in transit.

Q. But what is the major part of their business?

A. It's firm business.

Q. The brokers you use and select are engaged primarily in firm business, is that it?

A. That's right.

Q. And to a limited extent, in the transit business?

A. Yes.

Q. Do you endeavor to find wholesalers in the firm business, as distinguished from those in the transit business?

A. Yes, we do.

Q. When did your mill start operating?

A. In the spring of 1946, I believe.

Q. What is the annual output of your mill in carloads?

A. Well, at present, we're putting out around 24 to 25 cars a week.

Q. Twenty-four to 25 cars a week, that's approximately 11 or 12 hundred a year? Is that the way it would figure out?

A. Yes, that would possibly be it. It probably would vary with different years with the winters.

Q. Do you have a dry kiln?

[fol. 2218] A. No, we haven't.

Q. What is the type of lumber that you sell?

A. Well, mostly Douglas fir and white fir and hemlock.

Q. Do you sell that as green fir, or air-dried?

A. We sell it as green fir, and it's air-dried white fir and hemlock.

Q. White fir and hemlock?

A. Yes, those are air-dried.

Q. But primarily it's Douglas fir green lumber?

A. I'd say it would be probably 80 per cent Douglas fir.

Q. What is the territory of the United States to which your sales move?

A. Well, 80 per cent of the fir, Douglas fir, moves into the Colorado, Wyoming, and middle west areas.

Q. What do you mean when you say "middle west"?

A. That takes—

Q. What states do you include?

A. That's west of Chicago.

Q. West of Chicago?

A. Yes.

Q. Would it include states as far north as Wisconsin and Minnesota?

A. Yes.

Q. And states as far south as Missouri and Kansas?

A. Kansas, Texas.

[fol. 2219] Q. Yes, you ship into Texas?

A. Yes.

Q. Upwards of 80 per cent, you say, moves into the west of Chicago?

A. I guess part of that goes into Colorado and Wyoming.

Q. And where does the balance of your output go?

A. It would go—the biggest percentage of that would go to Chicago.

Q. Does any of it go east of Chicago?

A. It would be a small percentage going east of Chicago.

Q. Have you ever compiled a statement to show the distribution of your sales by states?

A. No, we never have.

Q. Have you any substantial portion of your business in the states of North and South Dakota?

A. No, we haven't.

Q. Do you sell in Montana?

A. Very little; once in a while.

Q. Do you know what competition you're faced with over in Montana?

A. No. It isn't only that we ship into the differential areas. We ship on the Portland rate, and we watch them points where we can pick up from a three cent differential up.

Q. But you do not ship, as I understand it, any substantial quantities in North and South Dakota?

[fol. 2220] A. No; that's right.

Q. For instance, in a year's time, how many cars would move to North and South Dakota? Could you tell us?

A. I don't know as we ever shipped a car into South Dakota, but I have shipped into North Dakota three or four a year.

Q. What rail routes do you use mostly out of your mill at Bingen?

A. Well, it would be SP&S, NP and GN, and OT—OT, GN.

Mr. Maguire: I couldn't hear the last.
Mr. Rockwood: And OT, GN.

By Mr. Rockwood:

Q. OT, GN—does that mean south?
A. That would go south on the WP south.
Q. Through—do you know what they call that route, what the jargon is? It's the Great Northern line south of Bend?
A. That's right.
Q. Is that to California?
A. Bieber.
Q. The Bieber route, that's right. How do you ship to Colorado and Nebraska and the southwest?
A. Generally ship SP&S, either GN or NP, and split it up, then CB&Q.
Q. Through what gateway?
A. Through the Laurel gateway.
Q. Through the Laurel gateway. Do you have trackage right into your plant at Bingen, at the mill at Bingen, [fol. 2221] SP&S trackage right into your plant?
A. Yes, we do.
Q. So, you can load on a side track?
A. Yes, that's right.
Q. Has it been explained to you what the Milwaukee is seeking in this case?
A. Yes, it has, more or less, as I understand it.
Q. Tell us what your general understanding is of what the Milwaukee is asking for.
A. My understanding is they're asking—trying to get the same rate as the Great Northern and Northern Pacific, the same rates.
Q. Through Spokane?
A. Yes, through Spokane and east.
Q. In connection with business off the SP&S?
A. That's right.

Mr. Rockwood: I led a little there.

Mr. Maguire: What was that that you said? Are you through, or was that just a side remark?

Mr. Rockwood: No.

By Mr. Rockwood:

Q. Is your company engaged in the business of starting out a load, stopping at some intermediate point to complete loading?

A. Well, occasionally; very little.

Q. What is the stop-off point that you have used?

A. That would be on the SP&S on the Goldendale branch.

[fol. 2222] Q. What mill?

A. J. Neils Lumber Company.

Q. You have stopped at J. Neils Lumber Company?

A. I have stopped at J. Neils.

Q. Have you ever stopped at a mill east of Spokane?

A. No, we never have.

Q. Does your company engage in the practice of starting out a car billed to a destination for partial unloading with directions to take it on to another point to complete unloading?

A. Well, occasionally, but very seldom. That's in the Colorado district only.

Q. You've never done it except in the Colorado district?

A. No.

Q. What has been the experience of your company with respect to rejected cars? Have you ever had cars rejected under conditions which made it necessary to move the car from the original billed destination to another destination?

A. Never have.

Q. Have you ever had questions of quantities or quality so that there was some controversy with your buyer, whether or not it was up to grade?

A. Up to grade?

Q. Or the right quantity?

A. We have, yes.

Q. How have you handled matters of that nature?

[fol. 2223] A. Well, now, in what way?

Q. Well, does the customer take it, or do you sell it to somebody else?

A. No. I have it held for inspection. That way I know I can trace it.

Q. How do you handle matters of that kind?

A. You'd better repeat the question again.

Q. Well, the question is: Have you ever had problems where the customer questions whether the car is just what he ordered, and the car is disposed of without taking it on to another destination?

A. Yes, I have.

Q. And how are those matters handled?

A. Well, I'd either call for re-inspection, or, the way we tally out the load, I can tell pretty well whether there's a shortage in there or not, and we just rectify it that way.

Q. And you adjust it with the customer?

A. Adjust it with the customer, that's right.

Q. Without the necessity of a diversion?

A. Yes, that's right.

Q. How often do questions of that nature arise where there is some question raised by the customer as to whether he's getting what he thinks he ought to have?

A. Very seldom.

Q. In a year's time, how many would there be?

[fol. 2224] A. Oh, probably 10 cars at the most. That would be minor where there's a shortage, left out of the car, or something like that by mistake.

Q. Would the addition of the route, as now requested by the Milwaukee via Spokane to Minnesota Transfer on business off the SP&S and beyond Minnesota Transfer via the Milwaukee's connections, be of any assistance to you in the marketing of your product from your mill at Bingen?

A. No, not any advantage that I know of.

Q. Are your present routes that you have available adequate to enable you to market your products without any difficulty?

A. Yes.

Q. You are served only by the SP&S, you say, and I take it that you order your cars from the SP&S?

A. That's right.

Q. What has been your experience in the past years with respect to the ability of the SP&S to supply you with cars when you want them for lumber loading?

A. They've been very good.

Q. Have you ever been hampered in your operations by a car shortage on the SP&S?

A. Very little.

Q. You have had some delays in the furnishing of cars?

A. Well, during an extreme car shortage, we'd have maybe a day or two delay, but that is all.

[fol. 2225] Mr. Rockwood: You may cross examine.

Cross examination.

By Mr. Maguire:

Q. When there's a dispute with a customer, Mr. Daubenspeck, who takes on that dispute? Yourself?

A. I do.

Q. You do?

A. Yes.

Q. Well, now, as I understood it, I couldn't hear very distinctly your response, but your biggest market is in Colorado and Wyoming that you reach through the Laurel gateway?

A. That's right.

Q. And I'm not going to ask you for percentages or anything of that kind, but that is the backbone of your business?

A. That's the backbone of our business. The percentage would be a guess, more or less.

Q. Yes, but the distribution at these other points are more or less side issues, as far as you're concerned?

A. That's right.

Q. Well, of course, then, under those circumstances, you would not be interested in a route to the Twin Cities via the Milwaukee, would you?

A. No, we would not.

Mr. Maguire: That's all.

Mr. Rockwood: I have no further redirect examination.

Exam. Dishman: Witness excused.

[fol. 2226] (Witness excused.)

Mr. Rockwood: Mr. Golden will examine the next witness.

Mr. Golden: Call Mr. Peterson.

WAYNE PETERSON was sworn and testified as follows:

Direct examination.

By Mr. Golden:

Q. Would you state your name, Mr. Peterson?

A. Wayne Peterson.

Q. Where do you reside?

A. Portland.

Q. And by whom are you employed?

A. Pacific Supply Cooperative.

Q. That is a cooperative association?

A. Yes.

Q. What is the nature of the business of the Pacific Supply Cooperative?

A. Pacific Supply is a wholesale agent for various local cooperatives in Oregon and Washington, handling feed, seed, chemicals, insecticides, farm machinery, and hardware.

Q. How many member cooperatives use the services of your cooperative, of your association?

A. I believe, just as an estimate, there would be about 250 that are eligible to do business. Not all of those are really active now.

Q. Could you tell us approximately how many farmer [fol. 2227] members there might be in each of these cooperatives for which you are the agent?

A. That could run from probably 200 to a few thousand in some of the larger cooperatives.

Q. What is your position with the association?

A. Broker in the seed and grain division, handling the grain end of it.

Q. What grains do you handle?

A. Corn, wheat, oats, barley.

Q. Now, directing your attention to the corn which you handle, would you tell us what the approximate volume is per year?

A. Per year it would run probably 50, 60 or 70 cars.

Q. From whom do you purchase this corn? Is that from a broker, or from the farmer?

A. All from brokers.

Q. All from brokers?

A. Yes.

Q. And where do you sell the corn?

A. To what we call local units or local co-ops, mainly in western Oregon and central Oregon.

Q. Could you name the points?

A. Well, we do quite a bit with—

Q. As you name the point, if you can, tell us what railroad serves the point.

A. Hillsboro, Oregon, would be—our unit there is on the [fol. 2228] SP. Pratum, Oregon, is on the SP.

Mr. Maguire: How do you spell that?

The Witness: P-r-a-t-u-m. Roseburg, SP; Central Point, SP; Mount Angel, SP; Redmond over in central Oregon—that would be OT or UP. Then we have our own branch in Klamath Falls, and that is on either the SP or GN. Those, I believe, would be the main customers on corn.

By Mr. Golden:

Q. And is that the coverage which you give to the Willamette Valley, those people to whom you sell in the Willamette Valley?

A. Yes.

Q. And also over on the Oregon Trunk?

A. Yes.

Q. Is the corn sold for consumption at points where you sell, or is it transited beyond?

A. No. Well, I would say it was all sold for mixing right there at the destination.

Q. Do you—or does the broker route the car to the point at which you want it?

A. We specify delivering carrier, and he routes from there.

Q. Have the brokers always been able to supply you with the quantity that you wanted?

A. Oh, yes.

Q. I'd like to direct your attention to the dealings in barley and ask that you describe just what your practices [fol. 2229] are with regard to the purchase and sale of barley.

A. Well, on barley we handle what we call the Willamette Valley Hannchen, a malting barley, and we handle that both out of the Willamette Valley and the Klamath Falls area.

Q. Taking first that that comes out of the Willamette Valley. How do you dispose of that? To whom do you sell it?

A. We either sell it to a local broker, or sometimes direct to the maltsters in the east.

Q. And that that comes from the Klamath Falls area?

A. That's usually all to local brokers.

Q. Now, could you tell us the amount or about the amount that you purchase each year in the Klamath Falls area?

A. Well, in a good year down there, it runs probably 250 to 300 cars.

Q. And in the Willamette Valley?

A. Probably 200 to 250.

Q. Now, in the Willamette Valley, on what railroad does the barley originate?

A. Either OE or SP.

Q. And in the Klamath Falls area?

A. It's SP or GN.

Q. When you originate barley or sell barley at those points on those railroads, do you route the cars to the ultimate destination, or is that furnished by the purchaser?

A. No. That's furnished by the purchaser, and we follow [fol. 2230] his wishes.

Q. Does the person to whom you sell know the location of the barley at the time that he makes the purchase?

A. No. We just sell Willamette Valley barley f.o.b. shipping point, which could be either one or two lines.

Q. Does he give you the routing then depending upon which line it's located on?

A. No. We make the sale, and, maybe before we ship, he would send the shipping instructions, or rather, they would.

Q. Do you have any example with you of the routing instructions which has been given to you by one of your purchasers?

A. I have one here, yes.

Q. Would you state who the purchaser was in that instance?

A. Hamm Malting Company.

Q. Now, would you read from that the routing instructions which are written thereon?

Mr. Maguire: Before he answers that, perhaps I should be allowed to look at that, if you don't mind. This, it should be understood, is the routing instructions on one car of barley. That's all right. Thank you.

By Mr. Golden:

Q. Would you read the routing instructions, please?

A. If SP, ship by SP, UP, thence CStPM&O, Omaha. If GN or NP, ship all the way these roads.

Q. Is that typical of the fashion in which you receive [fol. 2231] your routing instructions on those purchases?

A. Quite typical, yes.

Q. Do you sometimes receive similar routing instructions to route Southern Pacific, Union Pacific, and thence the Milwaukee?

A. Yes, I would say we've had SP, UP, Milwaukee.

Q. On this car or on this sale, for which you just quoted the routing instructions, what was the destination of that car?

A. St. Paul.

Q. Now, did you notice the routing instruction if the car is on the—if the car is on the NP or GN, route all the way —did you associate that line with the Oregon Electric?

A. Yes. If we pick one up that we have bought on the OE.

Q. In other words, then, the parlance with which that is used, the Oregon Electric and the Great Northern and the Northern Pacific are synonymous?

A. (Nodding.)

Mr. Maguire: What was the answer? The Reporter couldn't get the answer.

The Witness: Yes.

By Mr. Golden:

Q. Have you ever received less than the full market price for your barley because of the railroad on which it was loaded?

A. No, we never have run into that.

Mr. Golden: That's all I have on direct.

[fol. 2232] Cross examination.

By Mr. Maguire:

Q. Mr. Peterson, what is the term "NP or GN" synonymous with?

A. OE, I assume.

Q. What did you understand by Mr. Golden's question when you said it was synonymous? Did you understand that if they said GN or NP that you give it to the GN or NP at the nearest point that they can get it from the Oregon Electric?

A. Yes.

Q. Is that what you mean by synonymous?

A. Yes.

Q. I see. Also, as to this routing order that was given here, when you say it was typical, you mean that it was typical of all routing orders that direct the same routing as this?

A. Well, for instance, to Hamm's, our first contract for the year, he will probably give us instructions and then, from there on, he'll say "Route same as before."

Q. I see. So, this would be—well, this was on December 4th, 1953, and it covered this one car. Do you regard that as routing instructions for the next year, the year 1954?

A. See, this last year, there was very little malting barley

moving east. This was for the prior year, which would be the year previous.

Q. And what do you do? Do you pay any attention when the purchaser designates the routing? Do you check upon [fol. 2233] the routing to see whether the rate will be protected, or do you just ship it the way he tells you to?

A. No. We pretty well ship it the way he tells us. We figure that they're better at traffic than we are.

Q. I notice that—let's get at corn here for a moment. These plants for which you buy corn from brokers are at Hillsboro, Pratum, Mount Angel, Roseburg, and Central Point. Are all of them Southern Pacific points?

A. Yes.

Q. And none of those are served by the SP&S System, are they?

A. No.

Q. And Klamath Falls is served by the Southern Pacific and Great Northern?

A. Yes.

Q. So, that leaves the only point that is served by any unit of the SP&S System, so far as corn is concerned, is Redmond, Oregon, is it, and that is served by the Oregon Trunk?

A. Yes.

Mr. Torinus: How about Hillsboro? I guess there's no question about it. Wasn't Hillsboro one of the points?

Mr. Maguire: Yes. He said it was served by the SP.

The Witness: Our customer at Hillsboro is on the SP, although the OE goes into Hillsboro.

By Mr. Maguire:

Q. But, so far as this customer is concerned, it's an SP point?

[fol. 2234] A. Yes.

Mr. Maguire: I think that's all I have. Thank you.

Exam. Dishman: Anything more, Mr. Golden?

Redirect examination.

By Mr. Golden:

Q. Do you purchase any corn on the Northern Pacific Railway Company, as distinguished from the Oregon Electric?

A. Do we purchase corn?

Q. I beg your pardon. Barley.

A. I didn't quite follow that question.

Q. The Northern Pacific Railway Company, as such, does not run down into the Willamette Valley, does it?

A. No.

Q. Do you purchase any barley any place in the Willamette Valley—other than in the Willamette Valley and other than in the Klamath Falls area?

A. No.

Q. The Northern Pacific, as such, does not run to the Klamath Falls area?

A. No.

Mr. Golden: That's all.

Mr. Maguire: Nothing further.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Rockwood: I'll call Mr. Wilson.

[fol. 2235] James Wilson was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you state your name to the Reporter, Mr. Wilson?

A. James Wilson, sir.

Q. Where do you live?

A. Portland.

Q. And what is your business?

A. Traffic Manager for M & M Wood Working Company.

Q. That's the corporate name, "M & M". Those are not abbreviations for the corporate name? That's the full corporate name?

A. That is the full corporate name.

Q. What is the M & M Wood Working Company? In what business are they engaged?

A. Manufacture of plywood, doors, wooden tanks, wooden pipes, lumber.

Q. Where are the plants of M & M Wood Working Company located in Oregon and California?

A. Eureka, California, there's a plywood mill and lumber mill. Albany, Oregon, is a plywood mill. Lyons, Oregon, is a plywood mill.

Q. Now, just hold on. Albany is on the Oregon Electric?

A. Yes, sir.

Q. Is it served also by the Southern Pacific?

[fol. 2236] A. That's right.

Q. Rates and routes are available out of there?

A. Yes.

Mr. Maguire: I'm very sorry, but I was writing down something.

Mr. Rockwood: Albany, Oregon, is served by both.

Mr. Maguire: Yes, but what is at Albany?

The Witness: A plywood mill.

Mr. Maguire: Of the M & M?

The Witness: Yes.

By Mr. Rockwood:

Q. Now, at Lyons, Oregon, what railroad serves Lyons?

A. Southern Pacific.

Q. All right. Tell us what other plants you have.

A. A veneer plant at Idanha, Oregon.

Q. How do you spell that?

A. I-d-a-n-h-a. I'm not positive of that.

Q. What railroad is that located on?

A. That is not on a railroad. We truck to the Gates Reload, which is on the Southern Pacific.

Q. What other plants?

A. At Portland, we have a door plant. At Sullivan's Gulch, we have a door plant; at Kenton, a plywood mill;

a plywood mill at St. Johns; and the National Tank and Pipe Company at Kenton.

Q. Are all those—on what railroad tracks are those Port-
[fol. 2237] land plants located?

A. All Portland plants are located on the Union Pacific tracks.

Q. Are they in the switching limits of Portland?

A. Yes, sir.

Q. What railroads, other than the Union Pacific, do you have available for outbound movements from your Portland plants?

A. We have the northern lines, the Northern Pacific and Great Northern, SP&S.

Q. And Union Pacific?

A. And Union Pacific, yes.

Q. How long have you been in this business with M & M Wood Working Company?

A. Over five years.

Q. Does the M & M Wood Working Company engage in any business other than the manufacture and sale of its own products?

A. No.

Q. How does the M & M Wood Working Company dispose of its products? By what sales organization?

A. We have our own sales organization. We've got it throughout the United States.

Q. In what cities are those sales offices located?

A. Well, we have the Portland sales office that takes care of most of the west. We have one in Denver, one in Chicago, one in New York, one in Memphis, and one in Houston.

Q. Do you use any brokers or commission men or whole-
[fol. 2238] salers for the sale of your products?

A. No.

Q. You have heard the discussion here today about the difference between a transit car and a firm car. Now, in which of those categories is your business handled?

A. Our business is all on firm orders.

Q. A hundred per cent firm sales?

A. Yes.

Q. You handle no transit cars?

A. No transit cars.

Q. How many carloads at Albany—what do you make at Albany?

A. Plywood.

Q. Fir plywood?

A. Fir plywood, yes.

Q. How many cars do you ship out of Albany in a year?

A. I would say between 1000 and 1200.

Q. How many carloads do you ship from all of your plants that you enumerated in a year?

A. Roughly, I would say we ship approximately 6000 cars.

Q. You've talked about production of Douglas fir plywood. Do you sell any fir lumber?

A. No, no fir lumber.

Q. Any redwood lumber?

A. Yes, we sell redwood.

Q. Where from?

[fol. 1789] A. From Eureka, California.

Q. You talked about a door plant. Are those doors—what species do you use in the manufacture of doors?

A. We use—well, native woods. We use fir, hemlock, and some cedar. In the facing of the door, we use a lot of hardwood birch, luanan.

Q. What?

A. Luanan.

Q. Spell it.

A. L-u-a-n-a-n, and oak.

Q. The hardwoods do not grow in this area, do they?

A. No.

Q. Where do you get your hardwoods from?

A. Hardwoods come—walnut and maple come from northeastern Canada, and some from the eastern part of the United States.

Q. Are those doors that you manufacture for the most part built-up doors of plywood with a veneer?

A. Yes. They're basically—the majority of them will be fir core, faced with the hardwood, whatever it might be.

Q. In what areas of the United States do you sell your product?

A. Virtually every area.

Q. Have you—

Mr. Maguire: Pardon me. I just didn't get that answer.
The Witness: In every area.
Mr. Maguire: Every area.

[fol. 2240] By Mr. Rockwood:

Q. Have you made any tabulation to show the portion of your sales in the different portions of the United States?

A. Roughly. I don't have it accurately because that information would be pretty hard to get, but, roughly, it would be about 25 per cent, I would say, in the northeastern part of the United States, 25 per cent would come from—I would say—from Chicago west as far as Denver, and to the Canadian border, through Nebraska, Kansas, 25 per cent on the west coast, and the remaining 25 per cent would be the south central and southeastern.

Q. You have before you on the table a map of the Milwaukee system east of Spokane with certain stations indicated by blue lines, and west of that there are certain stations with green lines. If you will look at that map, you will see the blue line territory extends generally from the Iowa-South Dakota line westward.

Do you have any business local to the Milwaukee in that territory included in the blue area and west thereof to Spokane?

A. Yes, we have some.

Q. What proportion of your business? Can you give us some idea how much business you have to Milwaukee local stations in that territory?

A. Well, it would be a very small part of the business to local Milwaukee points in that area.

Q. Generally describe the routes that you have available for transcontinental business eastbound through Minnesota [fol. 2241] Transfer and beyond, and eastbound through Omaha and beyond to the Missouri River gateways?

A. Well, we have—eastbound, we have Union Pacific, Southern Pacific; OE, SP&S, GN or NP; UP, Marengo—we primarily use that on local Milwaukee points; GN, WP.

Q. That's through what gateway?

A. Bieber.

Q. Go ahead.

A. And we have SP through Ogden as well as El Paso. I believe that's it.

Q. Do you use the Laurel gateway of the northern lines?

A. Yes, sir.

Q. In conjunction with what railroad?

A. That's with the CB&Q.

Q. And from time to time, do you use all these routes that you have described?

A. Yes.

Q. Are you presently familiar with the rates and routes applicable from SP&S origin points to local points on the Milwaukee east of Spokane?

A. Yes.

Q. Have you been advised as to what the Milwaukee is requesting in this case with respect to routes?

A. Yes, sir.

Q. Tell us what your understanding is about what the [fol. 2242] Milwaukee is after.

A. My understanding is that the Milwaukee is after comparable rates with the Great Northern and Northern Pacific on traffic moving out of this area.

Q. Through what junction?

A. Through the Spokane gateway.

Q. And through to what destination territory?

A. Well, to any of the territory, including the Dakotas, Nebraska, as far as Chicago, and the Official Territory.

Q. And Official Territory?

A. And Official Territory.

Q. Does your company engage in the business of loading cars partially and stopping them at intermediate points to complete loading?

A. Yes.

Q. At what plants do you engage in such practice?

A. All of our Portland mills—well, I'd say that all of our mills except those in Eureka.

Q. Well, do you stop at mills owned by others?

A. On an occasion, we have. It's very seldom.

Q. For the most part, those stops are at your own plants?

A. Yes, sir.

Q. Intraplant business?

A. Yes.

Q. Does your company engage in the business of billing [fol. 2243] cars out to stop at one destination to partly unload and take the balance of the load on to another destination?

A. Yes, we do.

Q. To complete unloading?

A. Yes.

Q. In that practice, what practice do you follow with respect to rate territories?

A. You mean—I'm sorry, I didn't understand the question.

Q. Well, do you—

Mr. Rockwood: I don't want to lead the witness. Mr. Maguire would object.

Mr. Maguire: Well, you will one way or the other. Go ahead.

By Mr. Rockwood:

Q. Do you engage in that practice in what has been called blanket rate territory east of Chicago?

A. Yes.

Q. Do you start a car out to unload partially at a point west of Chicago, to complete unloading at a point east of Chicago? Is that generally your business?

A. Very seldom.

Q. And on what occasions do you do that?

A. Occasionally a customer will ask that we do that and take it upon himself to stand the difference in the freight rate due to the fact that it would be higher rated, but that doesn't happen but very seldom, as a practical matter.

Q. Do you ever have occasions on which a car billed to [fol. 2244] a particular customer is rejected by that customer for any reason, with the necessity for moving that car on to a destination other than the original billed destination?

A. Not that I recall at the moment.

Q. Would the addition of the route by the Milwaukee, as now requested, be of any assistance to your company in the marketing of its products which it sells?

A. No.

Q. Are your present routes available to you for your shipment of your product adequate in all respects to enable you to market your product in an orderly fashion?

A. Yes.

Q. Would the addition of the Milwaukee route be of any assistance to you in solving any problem with respect to partial unload—stopping to complete loading, or to stop cars for partial unloading, or to dispose of any cars as to which the customer has any question at the original billed destination?

A. None that I have ever seen.

Q. In the loading of plywood, what type of car do you find most desirable?

A. Double door box cars.

Q. How are they—by what process is plywood loaded into cars?

A. By jitney loading primarily.

Q. Just trundled out into the car and then stacked by machine?

A. Yes, sir.

[fol. 2245] Q. What is the length of the usual plywood product?

A. The length varies, but quite a majority of it would be 8 foot lengths, but we do run into some panels which run a good deal longer.

Q. Do you load into single door cars some?

A. Yes.

Q. When you have a car that is to move over the SP&S and the northern lines, from whom would you order the car? From the Union Pacific?

A. You mean out of Portland now?

Q. Out of Portland?

A. While we're on the Union Pacific, we order primarily from the SP&S; on occasion we have ordered from the GN and NP.

Q. If you ultimately plan to route it SP&S, what railroad would you look to for the cars?

A. From the SP&S.

Q. And if it's to move out Southern Pacific, from whom would you order out cars?

A. From the Southern Pacific.

Q. What has been your experience with respect to supply of cars at your plywood plant for outbound loading? Have you had shortages?

A. We've had shortages of special types of equipment. However, we have never been hampered for lack of—well, I won't say we have never been. We have in the past, but [fol. 2246] in the last three or four years, we haven't had—we've never had a shutdown for the lack of them.

Q. There has been some delay sometimes to get the particular type of car you want?

A. On double door cars, we've had delay, yes.

Q. Is that situation general on all railroads, or are you limiting your experience in that respect to any particular railroads?

A. Car shortages are on all railroads, and there are some that are more critical than others. I would say on the Oregon Electric at Albany we are particularly well off there as far as car supply is concerned.

Q. You're well taken care of?

A. Yes.

Q. With the type of car you want?

A. Yes.

Mr. Rockwood: You may cross examine.

Cross examination.

By Mr. Maguire:

Q. Your shipments out of Albany are practically all on a firm sale basis, are they, as well as from your other plants?

A. Yes.

Q. And let's look at your plants. In the Portland district, do you ever route anything to Minnesota Transfer or east via Northern Pacific or Great Northern direct from Portland?

A. Yes.

[fol. 2247] Q. Even though it could go via SP&S to Spokane?

A. Yes.

Q. You still route it direct NP or GN?

A. Yes.

Q. Now, of course, you—how long has the M & M Wood Working Company—how long has that been in existence? What number of years?

A. 1906.

Q. And during the almost 50 years, you have built up your marketing system upon the rates as they then existed and have since existed, is that true?

A. Yes.

Q. Upon the rates and routes?

A. Yes.

Q. So that you have taken conditions the way you found them and adapted yourself to them?

A. Yes.

Q. Now, I take it that it's your position that you just don't care much one way or the other about these Milwaukee rates?

A. No, sir. I have a very definite opinion.

Q. What's that?

A. I have a very definite opinion on it.

Q. That you don't need it?

A. Yes, sir.

Q. Is it going to hurt you any?

[fol. 2248] A. Yes, sir.

Q. How is it going to hurt you?

A. Well, my belief is that any other gateway you open for circuitous routings is going to take away from our car supply.

Q. Where do you get circuitous routings?

A. Where do you get them?

Q. Yes. Over the Milwaukee, now, where do you get the circuitous route?

A. Well, if you open up this routing, you run right through—just a minute here—somebody help me with the name of that junction.

Q. Who was it told you about it, this Canton?

A. Canton, that's the one, and, secondly—

Q. That's the one Mr. Torinus has been talking about.

A. I said it would open up circuitous routing, and that's the answer I was giving.

Exam. Dishman: A while ago, you said "secondly". What else were you going to say?

The Witness: Secondly, I was going to say that any line who comes in here and siphons off part of the revenue of the lines that we have in here presently, I think that will take away part of our service.

By Mr. Maguire:

Q. Who told you that?

A. That's all on my own.

Q. And who was it that first called your attention to this [fol. 2249] Canton routing over the Milwaukee?

A. Mr. Ehlen brought it to my attention when I asked him if there was any circuitous routing.

Q. I see. Did he bring to your attention also the circuitous routing over the Northern Pacific?

A. I know of theirs here.

Q. That's a circuitous routing too?

A. All the lines have got them, I think, but one.

Q. And would the Canton routing be any more evil in itself than the Oaks routing of the NP, for example, or the circuitous routings of the other lines?

A. No, sir. It would be one more.

Q. And firm sales people do not like to give any breaks to the transit operator, do they?

A. Well, it wouldn't be good business.

Q. Sure, and that's why you're against the circuitous route, because you're not in the transit business, isn't that it?

A. No, sir. My primary objection is because I've got to have so many cars.

Q. Yes, because you're a mill, and you need cars to get your stuff out of your way, and, if you were a transit operator, if you were a wholesaler of lumber, you would be in favor of transit, wouldn't you? It all depends on your economic viewpoint, isn't that true?

A. Well, to a certain extent, sir. Anything that takes [fol. 2250] away from our car supply, I'm opposed to, because I have to order the cars. That's my job.

Q. Now, then, if the Milwaukee were furnishing cars out

here and sending them through Canton, how would that deplete your car supply?

A. Well, they haven't sent any in yet.

Q. Well, I know. They haven't sent them over a circuitous route either. How do you know your car supply would be depleted?

A. Well, I do know that the more circuitous routings that you have, the more roller cars are going to be spending more time on the rails, instead of unloading and reloading.

Q. All right. Now, I don't know whether you were told this when you were given a resume of what the issues are in the case. The Milwaukee has said that there will be additional cars available for outbound loadings.

Mr. Rockwood: Just a minute now. There is no record that the Milwaukee will make additional cars available.

Mr. Maguire: Mr. Draver testified to that.

Mr. Rockwood: No, he didn't.

Exam. Dishman: The record will speak for itself.

Mr. Maguire: The record will speak for itself.

By Mr. Maguire:

Q. Now, then, if the Milwaukee does make additional cars available, what effect is that going to have upon you if some of those cars go over what you call a circuitous route? How is that going to affect the SP&S cars and the [fol. 2251] Oregon Electric cars you get?

A. Well, you're supposing now that we're getting those cars.

Q. Yes. Well, you're supposing also that there's going to be a circuitous routing. There are two "supposes" here. Wouldn't one "suppose" kind of outweigh or cancel out the other, since we're delving into speculation entirely?

A. You asked me why I was opposed to it. I told you.

Q. Yes. In other words, that, if there is a circuitous route opened up, and if that route is extensively used, and if that route siphons off cars from the Oregon Electric, for example, at Albany, that's what it is, isn't it?

A. That's right.

Q. It all depends upon "ifs". Now, then, are you of the

opinion, if the Milwaukee has joint rates with the SP&S, that the SP&S is going to suffer?

A. Yes, I believe they will.

Q. In what way?

A. Well, it stands to reason that, if an organization is losing a part of the revenue, they're not going to be able to give the service.

Q. Don't you know that we're not proposing to short haul the SP&S at all, but we're even in some cases giving them a longer haul than the stockholding lines allow them? How is that going to hurt the SP&S.

A. How about the GN and NP?—

[fol. 2252] Q. They're not defendants in this case. We're talking about the SP&S. Is the SP&S going to suffer?

A. I believe they will.

Q. By the Milwaukee taking revenue away from the SP&S?

A. No, not by taking revenue particularly away from the SP&S, but by taking it from their system northern lines.

Q. You mean their feelings will be hurt, or their finances will be hurt?

A. I think they'll be financially hurt.

Q. Well, now, just explain that for us. How is the taking away of revenue from the Great Northern and the Northern Pacific going to affect the SP&S? Let's get into that.

A. Well, I don't exactly know the financial structure of how the SP&S and GN and NP are set up.

Q. Then you don't know whether it is going to hurt the SP&S, do you?

A. It's my belief that it will.

Q. Well, upon what facts do you base that belief?

Mr. Rockwood: Mr. Examiner, this is entirely argumentative and it's improper cross examination. It grows entirely out of the cross examination by Mr. Maguire on subjects that were not touched on direct examination. He didn't get the answers he wanted, and now he's trying to argue with the witness.

Exam. Dishman: Well, I think the witness has expressed the opinion here—

[fol. 2253] Mr. Maguire: Certainly.

Exam. Dishman: —that his view is that they will be hurt. It's perfectly all right for Mr. Maguire to question regarding that.

So, you may answer.

Mr. Rockwood: Well, he's answered.

Mr. Maguire: No, he hasn't.

Mr. Rockwood: Within limits.

Mr. Maguire: If you have an objection, just state your objection.

Mr. Rockwood: He's making an argument with the witness.

Exam. Dishman: We don't want any argument on the record.

Mr. Maguire: I didn't start the argument, Mr. Examiner. I think the witness started it. I took him up on it.

Mr. Rockwood: In response to a question by you.

The Witness: I didn't intend to argue with you, but, what you asked was my opinion, and that is my opinion. Can't we leave it go there?

By Mr. Maguire:

Q. Well, if you will just answer one more.

A. All right.

Q. Now, you feel that your financial welfare is linked up with the financial welfare of the SP&S and of the Northern Pacific and the Great Northern? Do you feel that?

A. Yes.

Q. And then, if you do, I'm going to ask you about the [fol. 2254] facts on which you base your belief that the SP&S will be adversely affected financially by reason of the granting of the prayer in the complaint.

A. (Nodding.)

Q. What is the basis of that belief? Upon what facts do you base that belief?

A. Well, to my knowledge, the NP and GN jointly own and operate the SP&S.

Q. Do you know that they're operated by the Northern Pacific?

A. They're operated one year by one and the next year by the other one.

Q. Who told you that? Where did you get that information? They are an independent railroad, are they not?

Mr. Rockwood: Just a minute. I object to that as trying to get a conclusion of law out of this witness.

Mr. Maguire: The witness stated the conclusion of law.

Mr. Rockwood: I object to it as calling for a conclusion of law and not asking for any facts at all.

Exam. Dishman: The witness may state the facts on which he bases that belief that the SP&S is operated one year by one line and another year by another line. How did you come to that knowledge?

The Witness: Where I got the knowledge, I couldn't state. It's just through association, I guess.

By Mr. Maguire:

Q. Well, as a matter of fact, did you get some of that [fol. 2255] information during the discussion of your testimony in this case with some of these gentlemen in the room here?

A. No, sir. That was never brought up in our discussion at all.

Mr. Maguire: I see. Well, I don't think I'll pursue that with you because I believe that there will be other people who are better qualified on the facts than either you or I to discuss it, Mr. Wilson, so I think that's just about all I have of you. Thank you.

Exam. Dishman: Any other questions?

Mr. Rockwood: I have no further questions.

Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

We will now recess until 9:30 tomorrow morning.

(Whereupon, at 4:50 p. m., an adjournment was taken until 9:30 a. m., Wednesday, February 23, 1955, at the same place.)

[fol. 2258]

Transcript of Proceedings—February 23, 1955

Exam. Dishman: The hearing will get under way, gentlemen,

Mr. Rockwood: I will call Mr. Jones.

EMORY P. JONES was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you please state your name to the Reporter, Mr. Jones?

A. Emory P. Jones.

Q. Spell the first name.

A. E-m-o-r-y.

Q. And where do you live, Mr. Jones?

A. Wauna, Oregon.

Q. In what business are you engaged?

A. I'm the Sales Manager and Resident Manager for the Wauna Lumber Company.

Q. And the plant of Wauna Lumber Company is served by what railroad?

A. The SP&S.

Q. On what branch or line of the SP&S is Wauna located?

A. On the Astoria branch on the lower Columbia.

Q. How far east of Astoria is it?

A. About 25 miles.

Q. How long have you been in the business of manufacturing and distribution of forest products here in Oregon?

[fol. 2259] A. Thirty-two years.

Q. All that time on the lower Columbia River?

A. That's right.

Q. Does your company engage in the business of wholesaling lumber or manufacturing lumber, or a combination of both?

A. Manufacturing exclusively.

Q. Does all of your business move by rail, all of your product?

A. No, it does not. We're situated on tidewater. A very large percentage goes by water.

Q. Out of your total products of the mill, how much moves by water, and how much moves by rail?

A. Oh, I would say about two-thirds by cargo, and one-third by rail.

Q. What is the annual production of the Wauna Lumber Company at Wauna?

A. Well, it has greater potential than we're producing due to the shortage of logs, but we're producing about 30 million a year.

Q. Thirty million feet a year?

A. That's right.

Q. And of that total production, approximately how many move out by rail shipments?

A. About one-third of it.

Q. About 30 million, and with 30,000 to the car, if I follow the arithmetic of one of the witnesses, that's about [fol. 2260] a thousand cars? Thirty million feet at 30,000 feet to the car?

A. That's right.

Q. Then, what is the approximate number of cars that you ship by rail?

A. Approximately 300.

Q. What is the product that you produce and ship by rail from Wauna?

A. Well, it consists principally of kiln dried clears, uppers we call it, and industrial items, and treated uppers to treating plants.

Q. Do you have a dry kiln at the plant?

A. Yes, we do.

Q. And what species of lumber do you make?

A. Douglas fir and hemlock.

Q. How is the movement divided between fir and hemlock?

A. Well, that's a variable item, but I would say, over a year's period, about 75 per cent fir, and 25 per cent other species.

Q. How do you—by what processes do you sell your lumber?

A. Well, we sell principally through wholesalers. However, we do sell some direct to yards and contractors and other industrial plants.

Q. Are those wholesalers that you refer to located in the Pacific Northwest or in other parts of the country?

A. Well, our rail business is handled principally through western wholesalers.

[fol. 2261] Q. There has been considerable discussion during this hearing about the distinction between a firm car and a transit car. Are those terms familiar to you?

A. Yes, very much so.

Q. What proportion of—do you do business in firm business or transit business, or a combination of both?

A. We do firm business exclusively. To our knowledge, we don't sell any transit business. We can't control what the wholesaler may do with our lumber, but, normally, we figure it's firm business.

Q. From the records of your company, are you able to determine whether or not a car sold to a wholesaler is sold as a transit car or as a firm car?

A. Well, we can find that out subsequently, but it's usually an understanding on my part that it's firm business.

Q. What percentage of your business is ultimately shipped as firm business? Do you know?

A. Well, inasmuch as we don't ship yard stock items, which is normally the types of lumber that are transited, I would say it's 95 per cent of our business that's firm.

Mr. Maguire: Could I interrupt with a question just for clarification?

Mr. Rockwood: Surely.

Mr. Maguire: When you say that, you mean 95 per cent of the sales made by your wholesalers are firm sales? Is [fol. 2262] that what you mean?

The Witness: That's true.

Mr. Maguire: Thank you.

By Mr. Rockwood:

Q. In what areas of the United States do you dispose of your lumber and, if possible, give us approximate percentages of sales in each of the territories that you will refer to?

A. Well, I don't have that information in front of me. I have it in my brief case there.

Q. Here in the room?

A. Here in the room.

Q. Do you wish to refer to something in your papers?

A. I'd prefer to, yes.

Q. Well, from your memorandum that you have, will you tell us about how your sales are distributed in various territories of the United States?

A. Well, we found that—we just took a short period of time, four or five months. During that time, we shipped about 30 per cent into that territory of Illinois, Iowa, Kansas, et cetera, Minnesota, Missouri.

Q. Would that include North and South Dakota, Nebraska, in that 30 per cent?

A. Yes, it would, and we shipped about 10 to 15 per cent in the Official Territory.

Q. That's east of Chicago and north of the Ohio?

[fol. 2263] A. That's right, and the balance is Washington, Oregon, California, and other areas in the extreme southeast and eastern part of the country.

Q. Do you ship into the southwest, into the Texas area?

A. Yes, we do.

Q. And the surrounding states?

A. That's right, Oklahoma and Texas.

Q. You do not have a statement prepared for your use showing your distribution of cars?

A. No, I do not have.

Q. On the table before you is a map which was offered in evidence by Mr. Ehlen, when he was on the stand, showing the Milwaukee system between Spokane and Lake Michigan, and showing in the lower corner the SP&S System, and he has described the application of lumber rates from SP&S points to the Milwaukee destinations.

In this area of the Milwaukee, where the stations are colored in blue, the eastern portion of which is close to the Iowa-South Dakota-Nebraska line, between there and the Pacific Coast, do you sell any substantial part of your lumber?

A. No, no; very small percentage.

Q. What rail routes do you have available for shipments by rail of your lumber from Wauna?

A. Well, we have the SP&S in combination with the Great Northern and Northern Pacific. Of course, we use the [fol. 2264] Union Pacific and the Southern Pacific off the SP&S.

Q. Via what gateways on the northern lines do you move lumber?

A. Well, we ship through the Minnesota Transfer and the Laurel gateway.

Q. And the Laurel gateway is via what connecting line?

A. CB&Q.

Q. Have you had explained to you and have you examined a copy of this map, which is before you, being a copy of Mr. Ehlen's Exhibit No. 28?

A. Yes, I received a copy of this.

Q. Are you generally familiar with the present application of rates from points on the Santiam—from points on the SP&S, and particularly from Wauna, Oregon?

A. Yes.

Q. Into Milwaukee territory?

A. Yes, I am.

Q. If the rates from Wauna, Oregon, were made applicable via Spokane to local destinations on the Milwaukee, without the right of diversion to points beyond the Milwaukee, and on the same basis as rates now apply to points east of Mobridge, South Dakota, would you have any occasion to use those additional rates east of Spokane out of Wauna?

A. There's a possibility I might have.

Q. It might happen? Is your business such that you require extensive use of those rates?

[fol. 2265] A. No, it is not. We don't do—we're not represented particularly in that territory. We do very little business there.

Q. In your business do you receive cars at Wauna for any transit operations for movements on beyond?

A. Yes, we do.

Q. What is the occasion for the movement of cars into Wauna for ultimate movement beyond?

A. Well, we're in the treating business, and, oftentimes, our inbounds are less than carload quantities, and we just supply the treated portion, and we ask them to obtain the untreated items from other sources.

Q. From what sources do those cars come for completion of loading at Wauna with treated lumber?

A. Well, they originate principally in the Willamette Valley.

Q. Do you originate any in the state of Washington?

A. Yes, some in the state of Washington.

Q. And the rates are such that they can be taken by the SP&S—

Mr. Maguire: Just a moment. Let's not be quite so obviously leading. I think that's a very leading question.

Mr. Rockwood: All right.

By Mr. Rockwood:

Q. On cars coming from the Willamette Valley, the contents of which are treated at Wauna, what rates apply, if you recall, from the original origin point of that load to the ultimate destination?

A. Well, I don't get you.

[fol. 2266] Q. Well, is it a rate from, we'll say—

Mr. Maguire: Just a moment.

Mr. Rockwood: I'm not leading him.

Mr. Maguire: I think Counsel is leading this witness. He has asked the question. The witness has said he doesn't know. Now, Counsel is trying to supply the information to him.

Exam. Dishman: You might ask him if he knows the rate situation.

By Mr. Rockwood:

Q. Do you know what rate applies from Salem, what the rate situation is, say, from Salem, Oregon?

A. No, but I know what it is from Eugene. To Wauna, it's about 36 cents.

Q. Do you know what the rate is from Wauna into the territory, we'll say, east of Chicago?

A. $1.30.

Q. All right. Do you know what the charge would be on a shipment of lumber originating at Eugene, brought into Wauna, treated in transit, and then shipped to territory east of Chicago? Do you know?

A. I think our transit rate for treating in transit is about six and a half cents.

Q. The charge is six and a half cents for the treating in transit?

A. Yes.

Q. Do you ever start a car out partially loaded from [fol. 2267] Wauna for completion of loading at some point east thereof? Do you engage in that?

A. No, not very often. You mean in the pine areas?

Q. Well, for example, in the pine area, or any other area?

A. No. We don't have occasion to do that.

Q. Do you engage in the practice of billing out cars from Wauna to one destination for partial unloading, for movement to another destination to complete unloading?

A. In limited—occasionally we do.

Q. In what territory in which you sell are such partial unloads handled?

A. It's usually in Official Territory. We have occasionally in Pennsylvania and the New England states. We ship some of that gutter there, and a carload of gutter is more than one operation can use. So, it's distributed.

Q. Is that gutter stock treated or untreated?

A. Both.

Q. What has been the experience of your company in the matter of possible rejection of cars by the customer at the billed destination with the necessity for diverting that car to another destination? Have you had any of that experience?

A. I can't recall that we have.

Q. Have you been informed as to the general nature of the request by the Milwaukee in this case for routes from SP&S points?

A. Yes, I'm familiar with it.

[fol. 2268] Q. Would the addition of the routes requested by the Milwaukee be of any assistance to your company in the marketing of your products from Wauna by rail?

A. Well, except possibly those destinations that are not applicable now from Wauna.

Q. And what area of the Milwaukee are you referring to now?

A. Well, I'm speaking of west of Mobridge here.

Q. With the addition of that, for the conduct of your business, would you need any additional routes via the Milwaukee?

A. No. We have adequate service and have considered it so for the past 30 years, from the time I've been in there.

Q. Cars for loading at Wauna are ordered from what source?

A. Clatskanie.

Q. Also on the SP&S?

A. Also on the SP&S.

Q. You place no order for cars with any railroad other than the SP&S?

A. That's correct.

Q. What has been your experience in the last several years with respect to the ability of the SP&S to supply you at Wauna with the cars which you require for loading?

A. We have had—we've experienced no difficulty in obtaining equipment of the type that we require.

Mr. Rockwood: You may cross examine.

Cross examination.

[fol. 2269] By Mr. Maguire:

Q. Mr. Jones, does your plant deal in poles, treated or otherwise? I don't recall that you mentioned that.

A. No, we do not treat poles or piling. However, it's a vacuum pressure treatment of lumber.

Q. Yes. Well, your treatment of lumber is then of dimension lumber?

A. And timbers. It's what we call wolmanized lumber.

Q. I didn't get the name.

A. Wolmanized lumber.

Q. Will you spell it, please?

A. W-o-l-m-a-n-i-z-e-d. That's a term used to describe lumber that's been treated with wolman salts.

Q. We're always glad to get a good plug into the record. Now, on these sales to your wholesalers, do you deal pretty much with the same individual firms? Do you have your connections with them?

A. Yes, pretty much so. I explained that our sales through western wholesalers consist principally of industrial clear items.

Q. I see, and—

A. I know the different wholesalers that specialize in certain types of industrial items.

Q. Yes, and are those sales—upon what basis are those sales made to the wholesalers? Do they pay you immediately?

A. That's right. Our terms are 2 per cent, 15 days from [fol. 2270] date of shipment.

Q. I see, and so, from the time that the car is turned over to the wholesaler, to all practical intents and purposes, you're all through with it except possibly to get your money?

A. That's right.

Q. From these very reliable sources?

A. Right.

Q. And you don't have to worry very much about that, I imagine?

A. No, sir.

Q. And do you have anything to do, you yourselves, with the selection of the routing of the shipments, or do the wholesalers designate the routing?

A. Well, we endeavor to—of course, naturally, the delivering carrier—we protect that, but we consider we have the privilege of routing our cars the way we want to.

Q. And you exercise that privilege?

A. Yes, we do.

Q. Now, you stated that usually it is your understanding, when you sold to a dealer, that the lumber was to be sold to this particular wholesaler—when I used the word "dealer", I meant "wholesaler"—the lumber was to be sold to him for the purpose of making that firm sale in his turn?

A. That's right.

Q. Now, when you say "your understanding", do you mean that's the impression you have, or do you sell with [fol. 2271] that understanding? I just want to get that phase straightened out.

A. Well, I'd say that 90 per cent of the lumber that we do ship by rail could not very well be sold any other way than by firm order.

Q. In other words, it's a specialized type of lumber?

A. That's right.

Q. And timbers which have to be used for certain purposes and are not adaptable for sale on the general lumber market?

A. That's true. It does not go into retail yards normally.

Mr. Maguire: That's all. Thank you very much.

Mr. Rockwood: I have nothing further.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Rockwood: Call Mr. Helm.

JOHN J. HELM was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Your name is John Helm?

A. John J. Helm.

Q. H-e-l-m.

A. Yes.

Q. And where do you live, Mr. Helm?

A. In Portland.

Q. In what business are you engaged?

A. Lumber wholesaler.

[fol. 2272] Q. What is the name of the organization with which you are connected?

A. Cascade Pacific Lumber Company.

Q. What is your immediate responsibility with that company?

A. I'm the President and General Manager.

Q. The office of that company is in Portland, Oregon?

A. Yes, sir.

Q. How long have you been engaged in the business of sales and distribution of forest products in the Pacific Northwest?

A. In the Pacific Northwest, only since 1946.

Q. And prior thereto, in what business were you?

A. Lumber wholesaling in San Francisco.

Q. Altogether how long have you been in the lumber wholesaling business?

A. Since 1934—21 years.

Q. Does your company engage entirely in wholesaling, or does it manufacture?

A. We're strictly wholesalers.

Q. How do you sell—do you sell for mills here on the Pacific Coast?

A. Yes, sir.

Q. What is the extent of the area covered by the mills for which you sell?

A. From Bakersfield, California, to Vancouver Island.

Q. British Columbia?

[fol. 2273] A. Correct.

Q. Do you operate in the pine belt east of the Cascade Mountains?

A. Yes, sir.

Q. How far east do you go?

A. Clear to Libby, Montana.

Q. To Libby, Montana?

A. Yes.

Q. How do you make your sales of cars which you handle for your account?

A. Well, we sell direct to the industrial or the retailer. We sell through commission men, and we sell to eastern wholesalers, and we sell to exporters.

Q. Are you familiar with the distinction between what has been termed here a firm sale and a transit sale?

A. Yes, sir.

Q. Do you engage in both firm and transit business, or limit your operations to one type?

A. No. We engage in both, but principally firm business.

Q. What percentage of your sales are firm sales?

A. Oh, I would say we'd like to have a hundred per cent, but it's probably 95 or 96 per cent.

Q. You say you would like to have a hundred per cent firm sales. Why do you say you would like to have a hundred per cent firm sales?

A. We don't like the transit business, any part of it.

[fol. 2274] Q. What are your reasons for not liking transit business?

Mr. Maguire: Just a moment, Mr. Helm, before you answer.

I don't think, Mr. Examiner, that is at all material to the issues in this case, whether any particular witness prefers one kind of sale to another. There is no connection whatever between the preferences in business practices in the sale of lumber and this case.

Mr. Rockwood: Mr. Examiner, if this witness is familiar with the economics of the distribution and sales of lumber, I think it's entirely—I think his testimony would be entirely relevant on the question of what is or is not in the public interest in the light of the language in Paragraph 3 of Section 15 of the Interstate Commerce Act.

Exam. Dishman: Well, we've heard quite a bit of testimony here already about transit shipments and its merits.

Mr. Maguire: Could I be heard just briefly, Mr. Examiner?

Exam. Dishman: Yes.

Mr. Maguire: I would say that as to whether or not transit in the marketing of lumber is to the public good would be one that should properly be addressed perhaps to, if anyone, the Federal Trade Commission, rather than to the Interstate Commerce Commission.

This is a question of rates and routes that is involved here, not the relative merits of one or another kind of marketing. Now, then, even though the transit business may [fol. 2275] not be approved by a certain sector of the lumber industry in the Northwest, nevertheless, it is here, and it has been testified by other witnesses that it's been in the picture for many years past. It is a practical matter with which the Commission will have to deal as an existing situation.

Now, as to whether it is a good situation or a bad situation, there still is a substantial sector of the public which is engaged in the business, and I do not believe that any philosophizing upon the relative economic merits in the different means of marketing lumber would be of any aid to the Commission in settling the issues here.

Mr. Rockwood: Mr. Examiner, the—

Exam. Dishman: That's all right. That's enough argument. The witness may be permitted to answer, and what

you said, Mr. Maguire, will be considered when the Commission determines what weight, if any, it accords to this type of testimony.

Mr. Maguire: I don't wish to belabor the point, Mr. Examiner, but may it be understood that my objection runs to all testimony of this type, and that, if I do cross examine, it will be without waiving the objection.

Exam. Dishman: All right.

By Mr. Rockwood:

Q. Why would you like to have 100 per cent firm sales?

A. Well, of course, the firm sales are far more desirable. We know exactly what will happen to our lumber and when [fol. 2276] we'll get paid for it. We don't like the transit business because it cuts down the car supply.

Q. Have you formed any or come to any conclusion as to the extent to which car supply is affected by transit practices?

A. Well, my guess from watching roller cars is that it takes them at least 40 per cent longer to get to destination, which, of course, in turn delays the turnaround. That's one objection. The principal objection, I can't see any reason why the price of 2 by 4's and boards at mill origins should be set at any given time by how many transit cars are in trouble at Minnesota Transfer, Council Bluffs, or Kansas City.

Q. You do have some transit business?

A. Yes, sir.

Q. A very small percentage of your business?

A. Yes, sir.

Q. What is the occasion for your handling cars as transit cars to the extent that you do?

A. Well, generally speaking, we'll take on a transit to help a friendly mill.

Mr. Maguire: To help what?

The Witness: We will take on transit to help a friendly mill that's in trouble, or we find somebody that wants to give away a car, and we're not averse to buying cheap ones.

By Mr. Rockwood:

Q. What is the volume of shipments out of the Pacific Northwest handled by you as a wholesaler or handled by [fol. 2277] you under arrangements with mills whereby you handle the routing of the cars?

A. Approximately 1200 cars a month.

Q. Between 14 and 15 thousand a year?

A. Right around there.

Mr. Maguire: If your arithmetic is correct, and I think it is.

By Mr. Rockwood:

Q. Of that total, what portion of it is purchased by you as a wholesaler and then billed out and sold by you as a wholesaler?

A. Oh, 22 to 25 per cent, approximately.

Q. What is the general description of the products handled by you as a wholesaler, or handled by you under arrangements whereby you have the say as to the routing?

A. Well, we're pretty well diversified. I would say almost everything that would be considered forest products from the producing areas with the exception of box shook.

Q. With the exception of box shook?

A. Yes, sir. We don't deal in that.

Q. What are the sources from which you procure lumber that you handle?

A. We buy from sawmills. We buy from plywood producers, cedar mills, shingle mills, remanufacturers.

Q. How far north are the mills from which—with which you do business?

[fol. 2278] A. How far north?

Q. Yes.

A. We go clear to British Columbia.

Q. How far south?

A. We go as far as Bakersfield, California. That's as far south as we go.

Q. How far east do you go?

A. To about Libby, Montana.

Q. Do you handle lumber for the accounts of mills located on the SP&S in Oregon and Washington?

A. Yes, sir.

Q. Do you handle lumber for the account of mills which manufacture—which have their plants on the Santiam Branch of the Oregon Electric out of Albany up to Foster?

A. Yes, sir.

Q. Into what territory of the United States do you make sales?

A. I think we ship in all 48 states.

Q. Do you do any export business?

A. Yes, sir.

Q. To foreign countries?

A. Yes, sir.

Q. Do you handle any offshore business for destinations in the United States?

A. Yes, sir—offshore for destinations in the United States?

Q. For movement by water to any portion of the United States?

[fol. 2279] A. Coastwise?

Q. Yes.

A. Yes, we do.

Q. What percentage of your total business moves into the area east of the Illinois-Indiana state line and generally north of the Ohio and Potomac Rivers?

A. That would be called the blanket rate territory?

Q. It's been so designated.

A. Oh, I would say it varies between 25 to approximately as high as 40 or 45 per cent.

Q. What percentage of your business is in the tier of states that I'll define as Western Trunk Line, including Illinois, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska and Kansas? What percentage goes into those states?

A. That's pretty good territory. Depending on conditions and the time of the year, we might have as high as 40 or 45 per cent in there.

Q. Are you—is there any difference between the—scratch that, will you please?

I'm handing you a copy of a map, which was introduced by Mr. Ehlen the other day, as Exhibit No. 28, explaining—which he explained as showing the rates presently appli-

cable from SP&S points to points on the Milwaukee. Have you seen that map before?

A. Yes, sir.

[fol. 2280] Q. Are you generally familiar with the rates presently applicable from SP&S points to Milwaukee local points?

A. Generally so, yes.

Q. Do you ever have occasion to ship into that territory as shown by the map as Milwaukee points from SP&S origins via Spokane and the Milwaukee?

A. Yes.

Q. You have used those routes?

A. Yes, sir.

Q. What type of business? Is it firm or transit that you handle over that route?

A. That would be firm business.

Q. And you're able to get into that territory on firm orders via the Milwaukee?

A. Yes, sir.

Q. What routes are presently available—and I'm not asking you to give us specific routes, that is, detailed tariff references—but, in general, what railroads are available to you for the routing of lumber shipments out of the Pacific Northwest in the territory in which you deal to territory to the east, including territory all the way to the Atlantic Coast? What railroads do you use out of the Northwest?

A. Out of the Northwest?

Q. Yes.

A. Well, we use Southern Pacific. We use Union Pacific; [fol. 2281] SP&S in conjunction with Great Northern and Northern Pacific; sometimes originating on Oregon Trunk; sometimes originating Western Pacific.

Q. Western Pacific in California?

A. Yes.

Q. Do you originate on the Milwaukee in Washington?

A. If the mill happened to be on the Milwaukee, occasionally, yes.

Q. Do you sell from mills located on the Great Northern and Northern Pacific in Washington?

A. Yes.

Q. Do you route any lumber via the Union Pacific, Marengo, and Milwaukee east of Spokane?

A. We have had some of that, yes.

Q. Do you route any lumber via the Laurel gateway?

A. Yes, sir.

Q. In connection with the northern lines and the Burlington?

A. And Q.

Q. Do you route any lumber via the Bieber route in connection with the Great Northern south to Klamath Falls?

A. We do.

Q. Do you sell in California?

A. Yes, sir.

Q. What routes do you use into California?

A. Well, the bulk of the traffic, of course, is Southern [fol. 2282] Pacific, but we also go OE, GN, WP, Santa Fe, and Northwestern Pacific.

Mr. Maguire: Could I clarify one thing here? You're not talking about traffic which originates on the SP&S and its subsidiaries?

Mr. Rockwood: No; the Pacific Northwest. I was just having him give a panoramic picture of the rail facilities that he has used out of here.

By Mr. Rockwood:

Q. Do you customarily or from time to time use all these routes on shipments from the Pacific Northwest which you've described?

A. Well, we use them all, yes, many times.

Q. Would it be of any advantage to you in your business if rates were made applicable from the Santiam Branch to Milwaukee points east of Mobridge on the same basis as are now applicable from SP&S points, such as Salem and Eugene, to points on the Milwaukee east of Mobridge?

A. East of Mobridge?

Q. Yes, from the Santiam Branch to points east of Mobridge in the Milwaukee local territory.

A. Well, we ship that way now.

Q. From the Santiam Branch?

A. Yes, sir. We pay an arbitrary, but I understand it's going to be eliminated.

Q. Well, you ship that route using the arbitrary from where to where?

[fol. 2283] A. From the Santiam Branch to some of these destinations when we have to make delivery on the Milwaukee.

Q. Yes, and you use that route now with the use of the arbitrary?

A. Yes, sir.

Q. Would it be of any advantage to your business to have that arbitrary eliminated?

A. Naturally.

Q. So that the rates would apply from the Santiam Branch without the arbitrary?

A. Yes. We understand that's coming.

Q. Does your company engage in the practice of loading a car at one origin point, moving to another mill or source of lumber to complete loading, and then move on beyond?

A. Yes, sir.

Q. Do you do that in the pine territory?

A. Sometimes, yes.

Q. Do you ever have occasion to start out a car of fir and move in to complete loading in the pine territory?

A. Yes, sir.

Q. Have you ever had any trouble in finding pine mills from which—with which you could match up a fir order for shipment east?

A. Yes. It depends on the schedule.

Q. Depends on the schedule?

A. Yes.

Q. Are there several pine mills in the territory east of [fol. 2284] the mountains available to you for that type of business?

A. A lot of them available.

Q. Are cars of that nature handled by you as firm sales or transit sales?

A. That would be a firm sale probably a hundred per cent of the time.

Q. Have you ever started a car out billed to stop at one destination for partial unloading with directions to complete unloading at another destination?

A. Yes, sir, we do.

Q. Are cars of that type handled by you as firm or transit sales?

A. Oh, those are practically 100 per cent firm. I would say 100 per cent firm.

Q. In what territory do you do that type of business, delivering a part load, and then carrying it on to another location for completing?

A. I guess we've done that every place Denver and east.

Q. What has been the experience of your company with respect to rejection of cars by a customer under circumstances that make it necessary for you to move the car from the original billed destination, where the car is rejected, to another destination?

A. You say: What has been our experience?

Q. Yes.

A. Very sad ones.

Q. How many times do you have that sad experience?

[fol. 2285] A. Not too many. I still have dark hair.

Q. What?

A. Not too many. I still have dark hair.

Q. Do you have on occasions question by the customer as to the grade or price, which are sold to another or the same customer without moving it on to another destination?

A. You say grade or price?

Q. Grade or quantity, I should say.

A. Yes, we have occasional arguments with the customer, and we endeavor to settle them right there without moving the car.

Q. Yes. In a year's time, how many cars would you have, that you can give us any notion of, where you would have a car rejected and had to take on to another destination?

A. Well, I think we had one last year, maybe two.

Q. That's all that you can recall in a year's time?

A. Yes, sir.

Q. Would the addition of the—you're familiar—I may have asked you this, but I don't think I did—are you familiar with what the Milwaukee is asking for in this case in the way of additional routes?

A. I think so.

Q. Would the addition of that Milwaukee route, which is requested in this complaint, be of any assistance to your

company in handling any of your market problems relating or involved in the sale or distribution by you of the lumber which you handle?

[fol. 2286] A. I can't see where it would help particularly.

Q. Are existing routes out of the Pacific Northwest adequate to enable you to do all the business that you want to do?

A. Certainly.

Q. In your business, do you have occasion to be familiar with the extent of available cars for loading in the Pacific Northwest generally?

A. We're much aware of it.

Q. What has been your experience with respect to car supply at mills which are located on the Spokane, Portland and Seattle Railway, including Oregon Electric and the Oregon Trunk?

A. I think they've usually been in better shape than some other ones.

Q. Have there been periods when your mills were not able to get the cars just when they wanted on the SP&S?

A. Not for quite a while now.

Q. When it has occurred, has it been in periods when that is a local situation on the SP&S, or is it a period when there's a car shortage generally in the territory on all roads?

A. As far as I can recall, in times past, they're one of the last ones to run short of cars.

Mr. Rockwood: You may cross examine.

Cross examination.

By Mr. Maguire:

Q. Mr. Helm, I wonder if you could give me a little breakdown here of the 1200 cars per month which is the average [fol. 2287] number of cars that your firm handles, and I presume that means—is that the territory from Bakersfield to British Columbia, from the coast over to Libby, your total operation, the 1200 cars per month?

A. We route about 1200 cars per month, yes, sir.

Q. Now, could you give me any idea as to how many

of that 1200 cars, what proportion of them originate on the SP&S or their subsidiaries?

A. Oh, I have no exact figures on that, sir, I'm sorry. I just have no reason to keep track of that, but I would just guess offhand that a good 25 per cent or more, possibly it might run as high as 35 or 40 per cent.

Q. That is, 25 to 35, or maybe as high as 40 per cent?

A. It might run 40, yes. It would vary, of course.

Q. That's cars that are loaded on the SP&S?

A. On the SP&S system.

Q. How long have you had in this territory, or how long have you had to contend in the marketing of your lumber with the so-called transit wholesalers?

A. Well, there's always been a slight amount of transiting, I guess, for years and years and years, at least 25 years ago, not to a very large extent, but, as far as lumber is concerned, I would say that heavy transit operators, large transit operators started probably around 1947 and grew from there on.

Q. In other words, the lumber marketing industry in the [fol. 2288] Northwest has kind of changed its pattern in the last few years?

A. Yes, sir.

Q. And as I understand it, you will route a car as a transit car only to help a friendly mill, or when somebody gives you a very charitable price, is that it?

A. That's correct, sir.

Q. And in that case, you do transit in those cases?

A. Yes.

Q. Now, you stated that you do ship some cars through Spokane, that is, via the Spokane gateway over the Milwaukee to some of this territory that is outlined in blue and yellow on Mr. Ehlen's exhibit?

A. I think it's mostly in the blue territory.

Q. In the blue territory?

A. Yes, sir.

Q. And those are cars which you would have to deliver at a local Milwaukee point?

A. That's correct.

Q. And that is when you use the Milwaukee?

A. Right.

Q. Do you ever send any transit cars, any of your transit cars over the Spokane, Milwaukee route?

A. No, sir, we do not unless they originate on the Milwaukee.

Q. Yes, but I'm talking about cars originating on the SP&S.

A. On the SP&S, no, sir.

[fol. 2289] Q. Why don't you route transit cars over that route?

A. As a matter of fact, I don't go north on transit cars too much. I usually roll them south. However, if it originates in such fashion that it has to go over north, then we do go into Minnesota Transfer and the northern lines.

Q. Yes, and does the fact that you cannot move a transit car, if you once start it through Spokane on the Milwaukee, that is, when it originates on the SP&S, that you can't move it off onto a Milwaukee connection? Isn't that one of the factors which decides you to route northern lines?

A. Well, of course, it would be foolish to put a car in a bottleneck.

Q. Yes. So, therefore, you don't route transit cars via the Milwaukee through Spokane?

A. That's right.

Q. And I notice a note of pathos in your voice when you talked about rejected cars.

A. That's right.

Q. And I gather from the fact that you still have black hair that the extent of—you're willing to make a sacrifice on the rejections in order to make a deal with the consignee or to deliver in that immediate vicinity?

A. We like to take our licking fast and quick.

Mr. Rockwood: We like to what?

The Witness: We like to take our licking fast and quick.

[fol. 2290] By Mr. Maguire:

Q. And as to other people's choice on self-punishment in that connection, that's their business?

A. Their business.

Q. Now, as I understood, you stated that you sometimes have trouble completing loading of cars of Douglas fir and hemlock with pine east of the mountains?

A. Yes.

Q. Do you know anything about the St. Maries Lumber Company at St. Maries, Idaho, on the Milwaukee?

A. Yes, sir.

Q. Do you ever have them complete loading for you?

A. Not that I can recall. We might have. We buy quite a little there, and we sell quite a bit of their lumber.

Q. But the mixing of St. Maries' lumber with Oregon Electric lumber, regardless of whether it's the Santiam Branch or where it is on the Oregon Electric, would result in your getting into that same bottleneck you're talking about, wouldn't it?

A. No.

Q. In other words, you would not be able to complete loading—maybe I'd better clarify my question. You would not be able to complete loading at St. Maries for a car which you wanted to market in Official Territory if you had to route it Milwaukee from there on, could you?

A. I don't understand what you mean, sir.

Q. Suppose you have a car, which originates on the Ore- [fol. 2291] gon Electric, which you wish to sell in Official Territory at the $1.30 rate. Now, you could not route that car through Spokane, thence Milwaukee, could you?

A. No, sir.

Q. And so, therefore, you could not, without paying a combination of locals, you could not complete loading of a car of that kind at St. Maries, which is a local point on the Milwaukee?

A. I didn't know that, but I guess you're right.

Q. It sounds reasonable?

A. Yes, sir.

Q. And would you be averse to having another source of pine for completion of loading?

A. Well, no, we would not be averse to it.

Mr. Maguire: Thank you very much.

Mr. Rockwood: Just a minute. I just have one or two questions.

Redirect examination.

By Mr. Rockwood:

Q. Do you know how many mills there are, pine mills, on the Milwaukee east of Spokane served solely by the Milwaukee? Do you know?

A. I didn't know that we were limited on any of them.

Q. I mean served only by the Milwaukee as St. Maries, local to the Milwaukee.

A. I have no idea.

Q. Do you know how many pine mills there are east of [fol. 2292] Spokane on the Northern Pacific, Great Northern, and Union Pacific?

A. Quite a few.

Q. Generally, can you tell us the relative number of mills served by railroads east of Spokane, other than the Milwaukee, compared to the number served by the Milwaukee? Can you tell us?

A. I have no figures, but I would say it's 90 to 10, or better.

Q. Ninety?

A. Ninety per cent other than Milwaukee, is my guess.

Q. Ninety per cent other than Milwaukee, or better?

A. Yes.

Mr. Rockwood: That's all.

The Witness: Just a guess.

Recross examination.

By Mr. Maguire:

Q. That is just your guess, as you say? You are not familiar with it?

A. No.

Mr. Maguire: That's all.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Golden: Mr. Hennecke, please.

GEORGE HENNECKE was sworn and testified as follows:

Direct examination.

By Mr. Golden:

Q. State your name, please.

[fol. 2293] A. George Hennecke.

Q. Where is your home, Mr. Hennecke?

A. Seattle.

Q. By whom are you employed?

A. Crescent Lumber and Shingle Company.

Q. In what capacity?

A. Treasurer of the company, sales and buying, routing.

Q. Do you have the title of Traffic Manager?

A. Yes, sir.

Q. Could you tell us what the extent of your experience is in the sale of forest products in the Pacific Northwest?

A. I don't know as I understand the question.

Q. What have you done during the past few years as related to the buying and selling of forest products in this territory?

A. Oh, I've been with Crescent Lumber and Shingle Company since 1948. I started there, routing cars at that time, my original job, and invoicing, and eventually working into sales and buying. I still carry on as Traffic Manager.

Q. Does your company engage in the manufacture of lumber products, or is it wholly sales?

A. We're a hundred per cent wholesalers.

Q. Wholesalers?

A. Wholesalers.

Exam. Dishman: We have quite a bit of competition. So, please speak up.

[fol. 2294] By Mr. Golden:

Q. Mr. Hennecke, there's been a lot of definition of wholesale around here. So, I think, unless Mr. Maguire wants to get into that, I won't ask you to define what a wholesaler is.

In the marketing of lumber products, does your company engage in selling cars in transit, or in making firm sales, or both?

A. We do both.

Q. Of the volume which is done by you, about what per cent would be firm?

A. It would be a guess, but I would say it's about a 50-50 proposition.

Q. About what is the volume that your company markets each year?

A. On a yearly basis?

Q. On a yearly basis.

A. I didn't make a note of it, but you're speaking in cars?

Q. In carloads, that's right.

A. Oh, I would say probably about 100 cars a month. It will vary, of course, sir.

Q. What is the description of the lumber product which you buy?

A. You mean the type of material?

Q. The type?

A. Well, we handle all the species that come out of the Northwest, including the inland pine area. Do you want me to name them?

[fol. 2295] Q. Yes, if you will, please.

A. Fir and cedar and hemlock, pine, larch, spruce, cottonwood, and what have you.

Q. Now, what types of lumber do you sell? Is it the common grades and dimension?

A. Yes.

Q. Boards?

A. We sell most all types, I think. We probably sell heavy to the common grades. Say 50 per cent of our business being transit, that would be commons almost 100 per cent, and, among the other business, I would say mostly common lumber.

Q. Now, what is the territory in which you market your lumber?

A. Well, we canvass almost the entire United States, but the heaviest part of our marketing, I would say, would be in the midwest.

Q. Could you name the states where your heaviest marketing territory is?

A. I could name Michigan, Ohio, Illinois, Indiana, Missouri. Of course, we could cover a lot of the others, but

I'm thinking of the heaviest ones now—Wisconsin—you could go on down the line, I suppose.

Q. Do you sell extensively in the southeastern part of the United States?

Mr. Maguire: Just a moment. Could I have that question read back? I'm sorry, Mr. Examiner, but I find great [fol. 2296] difficulty in hearing either the questioner or the witness.

Exam. Dishman: Yes, I am too. We have a lot of competition outside. Would you repeat the question, Mr. Golden?

Mr. Golden: Will you read it back, please?

(Question read.)

The Witness: Not heavily, no, because we're competing down there with pine, the yellow pine territory, and the freight rates are against us down there. So, there would just be certain types of lumber that you can sell in that area competitively.

By Mr. Golden:

Q. What are the states in which you purchase the lumber which you market?

A. Well, we buy in all the northwest states, Washington, Oregon, Idaho, Montana, California.

Q. Any in Canada?

A. Yes.

Q. Do you buy any substantial amount of lumber off the SP&S or the Oregon Electric?

A. We buy a percentage off there all the time.

Q. How about the Oregon Trunk?

A. Yes; probably buy more off the Oregon Trunk than off the SP&S.

Q. Do you buy lumber which you ship, for instance, Great Northern or Northern Pacific, Milwaukee?

A. Yes.

[fol. 2297] Q. How do you route that lumber?

A. Well, usually, if it—it depends on where it's going, of course, but if it originates on—whatever line it originates on is the line we usually route it. We give them what they call their long haul, and from there on—

Q. Do you purchase lumber off the Union Pacific?

A. Yes.

Q. How does that go?

A. It usually goes to Omaha, as far as Union Pacific is concerned, or Kansas City.

Q. And that which you purchase off the Southern Pacific, how do you route that?

A. Oh, that will go either SP, UP, or D&RGW, MoPac, and those lines.

Q. And the Oregon Trunk, another of the SP&S System?

A. Well, there you have a choice. You can go either NP or UP.

Q. That is, off the Oregon Trunk?

A. Yes. GN, I guess, too.

Q. Do you consider the existing available routes, which you now have, sufficient to enable your company to market the products which it purchases in the territory?

A. Yes.

Q. Do you see any reason why you should route a car, which may originate on the Oregon Trunk, or the SP&S, or the Oregon Electric, over the Milwaukee from Spokane if that car is moving east of the Minnesota Transfer?

[fol. 2298] A. No, sir.

Q. Why not?

Mr. Maguire: Just a moment. Now, I think the witness has answered that he would not, and I think that successfully disposes of that question. He would not route via Milwaukee through Spokane if it originated on the Oregon Trunk or the Oregon Electric.

I don't think that it's material here except on cross examination. If I want to go into it, that's a different thing.

Exam. Dishman: The witness may answer.

The Witness: Well, we'd be short hauling the NP or GN.

By Mr. Golden:

Q. Mr. Hennecke, does your company partially load cars to stop at any intermediate point to complete loading with some other type of product?

A. Occasionally.

Q. Would you do that on a car that you were selling in transit, or would it always be a firm order car?

A. Normally, it would be a firm order car because, usually, when you stop to complete loading of more than one specie, you wouldn't put a car like that in transit normally.

Q. I was speaking now about stopping a car to complete loading.

A. That's what I'm talking about.

Q. How about one for partial unloading at one point and for complete unloading at another destination? Do [fol. 2299] you do that, to complete unloading at a final destination?

A. We do some of that, yes.

Q. Would that be firm or transit business?

Mr. Maguire: I can't hear you, Mr. Golden, I'm sorry.

By Mr. Golden:

Q. Would that be firm or transit business?

A. That would be firm business normally.

Q. Would you stop one car to part unload—or a car to part unload in one rate territory for complete unloading in a different rate territory?

A. Not normally, because you would have to pay the higher rate at the point where you part unloaded it, and it's something you would have to absorb or charge a higher price, and you wouldn't be competitive.

Q. Do you engage in that business at all west of the Minnesota Transfer?

A. Yes.

Q. What has been your experience with respect to cars rejected at the billed destination? Does that ever occur?

A. Not very often, thank goodness.

Mr. Maguire: Did you say "very often" or "not very often"?

The Witness: Not very often.

By Mr. Golden:

Q. When it does occur, where is the car normally located?

A. Well, the customer usually has it located in his yard, I would think.

[fol. 2300] Q. On an industry spur, or would it be on the team track in that situation?

A. Well, I think probably most yards have it on a spur. It could feasibly be on the team track. Normally, it's on a spur.

Q. If it were on an industry spur, could you dispose of that car without paying a combination of locals?

A. No.

Q. If the car should be on a team track, would it under normal conditions be capable of diversion from that point?

A. If it were located on a team track, it could be, yes, as I understand it.

Q. Would that be true of a car that you had sold while the car was in transit?

A. No, because you would have diverted the car once.

Q. You could not again divert?

A. You're only allowed one diversion.

Q. If a car is rejected at destination due to some complaint regarding its grade, what course do you normally follow?

A. Well, you try to find out—you say it's rejected?

Q. Yes, due to its being off-grade.

A. Well, your normal reaction to that is to have re-inspection if possible.

Q. Would you explain the process of re-inspection?

A. Well, yes. If the dealer gets a car in there, he just can't say he just rejects it. I mean there has to be two [fol. 2301] sides to the thing. You have the option, from the law standpoint, I suppose, of forcing him to take it, but the way to settle it as mutually as possible is—you have two associations—you have the Western Pine Association and you have the West Coast Lumbermen's Association, depending on the species that is in the car. One grade or the other would govern.

Both associations have inspectors in the east, assuming we are talking about the car being east, and the dealer and the wholesaler and the mill, everybody concerned, has to agree to have a re-inspection, and the inspector is called in. Somebody orders an inspection, usually the mill. The

mill orders it, pays for the re-inspection as an advance on it. The lumber is re-inspected by a party back there who is neutral, and then, if it's within 5 per cent of the grade as billed, why, the dealer back there loses the inspection and is obligated to accept the car at the invoice price.

If it's more than 5 per cent off, the mill loses the re-inspection and pays the inspector's costs, and the dealer is only obligated to take that which is up to grade. The other is at the mill's disposal. By the same token, if the customer loses the re-inspection, he pays the inspection costs.

Q. Do you find that the necessity of the customer paying the inspection costs has anything to do with the frequency with which he might reject a car?

A. Well, yes, I would say—

[fol. 2302] Mr. Maguire: Just a moment, Mr. Hennecke. I believe we are getting far off onto a detour here when we get talking about the customer not asking for re-inspection because he might have to pay the inspection fee. I think that's getting pretty far off the subject.

Exam. Dishman: What is the purpose of the question, Mr. Golden?

Mr. Golden: The purpose of the question is to show the fact that the customer may have to have the re-inspection and pay for it. It deters him in rejecting a car because of his belief or his supposed belief that it might be—

Exam. Dishman: What does that have to do with the issues in this proceeding?

Mr. Golden: It shows it almost never happens.

Mr. Maguire: The witness has already testified he's had very few rejections, and I think he's really belaboring the point where he goes back into the reasons for the few rejections. I haven't raised any question about it.

Exam. Dishman: The witness may answer this question. Do you understand what the question was?

The Witness: The original question? The one—

Exam. Dishman: The one you haven't answered.

The Witness: I guess not, sir.

Exam. Dishman: Repeat it.

Mr. Maguire: If you want to, I'll do this in order to [fol. 2303] save time on this thing: I'm willing to stipulate that the possibility of the customer having to pay the re-inspection fee, in case he loses out on the re-inspection, might be a deterrent to his rejecting a car.

Now, if that's what you're trying to get at, let's put that in and let it go at that.

Mr. Golden: If you will change "might" to "will" in your stipulation or the word "is", I'll accept it.

Mr. Maguire: Of course, I won't. Your witness won't say that either. It's all speculation.

Exam. Dishman: Proceed, Mr. Golden.

Mr. Golden: I'll leave the point.

Exam. Dishman: Are we clear on that one point? Mr. Witness, did you agree that the statement made by Mr. Maguire—

Mr. Maguire: Just a moment, Mr. Examiner? Pardon the interruption. Mr. Golden said he abandons the point. So, therefore, there's no need of it.

Mr. Golden: It's something I can argue in my brief.

Exam. Dishman: All right. I didn't understand it.

By Mr. Golden:

Q. Returning, Mr. Hennecke, to the subject of cars billed to part unload at one point for complete unloading at a final destination, if you had the part unload order at a point on the Milwaukee, where would you initially ship that car from?

A. Well, that—it would depend on where the place was [fol. 2304] on the Milwaukee. In other words, if it were, say, somewhere in Wisconsin, you could ship it from most anywhere and bill it to Minnesota Transfer and Milwaukee beyond. It depends on the location.

Q. Would you attempt to match the destination with the origin of the car?

A. Well, not necessarily. I mean that's putting your order together as it's made.

Q. Do you have any difficulty in putting orders together in that regard with the routes as they exist now?

A. Normally, no.

Mr. Golden: That's all.

Cross examination.

By Mr. Maguire:

Q. It was hard for me to get some of your direct, Mr. Hennecke, so you'll bear with me if I ask you some repetitious questions, but what I did get of it was that you buy pretty much all over the Northwest, is that right?

A. That's right.

Q. In the Pacific Northwest?

A. That's right, and northern California.

Q. From California to British Columbia?

A. Right.

Q. And from the coast how far east?

A. Oh, into Montana, some to Missoula.

Q. And you handle all species from all sources about 100 cars a month?

[fol. 2305] A. That figure will vary, but I would say an average.

Q. An average. I realize that. I won't hold you to that. Now, of that estimate, about what percentage would you say you buy from points, or, rather, consist of cars which originate and are shipped out from the Oregon Trunk?

A. Well, that's something that would vary from time to time. It's hard to answer. I would say probably—I'd make a guess at—the figure might be right one year and way off the next, although it seems like in the wholesale business, your buying fluctuates. You buy from one area extensively for a period of time, and for one reason or another the business will change.

Q. Let's take last year. Let's take 1954.

A. Oh, I would say, without knowing exactly, I'd say 10 or 15 per cent.

Q. That would be, if your estimate of 100 cars per month is anywhere near accurate, that would be from 10 to 15 cars?

A. I would say that would probably be it.

Q. Those are 10 to 15 cars which were purchased over in the Deschutes Valley in Oregon and are shipped out on the Oregon Trunk?

A. Yes. To clarify something that's going in my mind,

when you say "Oregon Trunk", I'm taking into consideration Prineville, which originates on the City of Prineville, not the Oregon Trunk proper.

[fol. 2306] Q. Yes, but I'm not trying to include in that the Union Pacific being joint users on that line as far as Bend. I'm not counting cars which you might ship out via Union Pacific, or does this include Oregon Trunk and Union Pacific cars, would you say?

A. Well, I was thinking of the entire territory.

Q. The entire deal?

A. Yes.

Q. And I don't suppose that you'd want to try to make a split between the Oregon Trunk and the Union Pacific, would you?

A. Yes, we do.

Q. I mean now as to splitting the percentage, an estimate of the percentage?

A. Oh, no.

Q. I won't ask you that.

A. I wouldn't know.

Q. Well, based upon the same and with the same background here that this is just a rough estimate on your part, about how much of the cars you handle would you say originate over on the west side of the mountains on the Oregon Electric or SP&S proper?

A. Not too many. Being we're in Seattle, we're quite a ways from there. We're competing with Eugene and Portland.

Q. Now, I wasn't quite sure whether you stated whether you do use the route of either the Oregon Trunk or Oregon Electric through Spokane, thence Milwaukee, to Milwaukee [fol. 2307] local points. Did you say you do use that, or not?

A. I don't believe that I said.

Q. Oh. Well, then, I'll ask you.

A. I don't—I may have on occasions, but we don't sell much—when you say Milwaukee points, I get confused. Is that some points—

Q. Well, you've got that map in front of you. Let's take those points that are blue in the Dakotas there west of Minnesota. Do you do much business in there?

A. No, we do not.

Q. And so far as the yellow is concerned, the points in yellow on Exhibit 28, you do some business in that area, but those rates, according to the legend, also apply via the Northern lines to the transfer, and out of Minnesota Transfer and into the yellow then. That's what the legend on the map says.

Would you route any of that Milwaukee to the yellow parts, or would you route GN or NP to the transfer?

A. Well, it would depend on the origination. In other words, it would depend on what line the mills were on.

Q. Yes, but suppose it were Oregon Electric.

A. Oregon Electric?

Q. Oregon Trunk?

A. Well, I would route that NP, GN to transfer, and then Milwaukee beyond.

Q. Supposing the Union Pacific furnished a car over in [fol. 2308] the Deschutes Valley line, and it went out of Bend or in that country, Prineville, the Prineville area, via UP, which way would you route it out of Spokane, or would you route it via Spokane?

A. No. Now, are we speaking still of—

Q. This yellow territory.

A. Of a car that's a firm sale, in other words?

Q. Yes, a firm sale.

A. That's going to a Milwaukee point?

Q. Yes.

A. That's something that I think—we don't have too many sales of that nature where it's sold for mill shipment, but it runs in my mind that—isn't Marengo the junction there? Isn't it UP, Marengo, Milwaukee?

Q. Yes, UP, Marengo, Milwaukee.

A. If it took that, why, that's the route we'd use.

Q. Yes, and if it were a firm sale, you would do it that way?

A. Yes, if it were a firm sale.

Q. But would you route any transit cars of any kind through the Spokane gateway, or through the Marengo gateway, UP, Marengo, Milwaukee?

A. No.

Q. Why not?

A. Because—as I understand, because you couldn't get

on east with it. You have to give the UP, in this instance, their long haul.

[fol. 2309] Q. You'd have a restricted application in both cases?

A. That's right. I mean there'd be no point in doing it, normally.

Q. And I suppose that, if you got a shipment that you billed out on the Oregon Trunk to some point on the Milwaukee east of the transfer, this yellow territory, and tried to bill it out Oregon Trunk, SP&S, Spokane, Milwaukee, you would have the whole SP&S right down your neck, wouldn't you, for short hauling them, the family?

A. Well, I don't know about that. We don't have the SP&S calling on us up in Seattle.

Q. Yes. Well, you'd have the Northern Pacific and the Great Northern jumping down your throat anyway, wouldn't you?

A. That's probably right.

Q. So that is—

A. We get that from all the railroads.

Q. Yes.

A. When we short haul them.

Q. But that one about keeping it in the family is one that's pretty forcibly impressed on the shippers, isn't it?

A. I think you could say that.

Mr. Maguire: That's all.

Exam. Dishman: Any more, Mr. Golden?

Mr. Golden: Yes, sir, I have a few questions.

[fol. 2310] Redirect examination.

By Mr. Golden:

Q. Do you route cars off the Milwaukee through Minnesota Transfer to east of Chicago?

A. Yes.

Q. Originating on the Milwaukee?

A. Yes.

Q. Do you take those cars from the Milwaukee at Minnesota Transfer and give them to some other Western Trunk line to haul to Chicago?

A. Normally, we give the Milwaukee the haul to Chicago because, as he just mentioned, we usually hear about it if we don't.

Mr. Golden: That's all.

Mr. Maguire: Maybe I'm beating this around too much, but I can't resist this one.

Recross examination.

By Mr. Maguire:

Q. The other lines, which go from Minnesota Transfer down to Chicago, solicit your business, do they not?

A. That's right.

Q. And you do give them some business?

A. That's right.

Mr. Maguire: That's all.

Mr. Golden: That calls for another one.

Redirect examination.

By Mr. Golden:

Q. Is the business that you give to those Western Trunk lines the business that you route into the transfer over [fol. 2311] the Great Northern and Northern Pacific?

A. Normally, yes.

Mr. Golden: That's all.

Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: We'll take a short recess.

(Short recess taken.)

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Rockwood: I will call Mr. Sanderson.

H. E. SANDERSON was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you state your name to the Reporter, Mr. Sanderson?

A. H. E. Sanderson.

Q. And where do you live?

A. Eugene, Oregon.

Q. In what business are you engaged?

A. Lumber manufacturing.

Q. With what company and in what capacity with that company?

A. Giustina Brothers Lumber Company, Production Manager and Acting Sales Manager.

Q. And you spell Giustina—G-i-u-s-t-i-n-a?

A. That is correct.

Q. Brothers—"Bros." Lumber Company?

[fol. 2312] A. Yes.

Q. And where is the plant of Giustina Brothers Lumber?

A. 2nd and Garfield, within the city limits of Eugene.

Q. Will you speak up just a little louder so we can all hear you?

A. Yes; 2nd and Garfield, within the city limits of Eugene.

Q. Who in your company is responsible for the routing of carloads of lumber out of your plant?

A. Mr. Rushing at the present time. Until just a short time ago, I had complete charge of that, but, as of this particular date, Mr. Rushing is in charge of it.

Q. In what business is your company engaged? A manufacturing company?

A. A manufacturing company, primarily Douglas fir, both green and dried, with a very small percentage of cedar and hemlock.

Q. By what railroad is your plant served?

A. Both on the Oregon Electric and the Southern Pacific.

Q. Do you engage in wholesaling, or is your business limited to disposal of your own product?

A. We dispose of our own product through wholesalers.

Q. But you are solely in the manufacturing business yourself?

A. That's correct.

Q. Now, tell us a little bit more about your policy of sales through wholesalers. Do you sell outright to the wholesalers, or do you sell on commission, or how?

[fol. 2313] A. We sell outright to wholesalers. Our business, as we look at it, is considered 100 per cent firm business. In other words, we do not sell on a commission basis, nor do we sell transit basis. We take orders at firm prices and ship firm business only.

Q. Now, the wholesalers with whom you deal, are they located on the west coast or in the east?

A. Throughout the entire United States.

Q. Now, the wholesalers themselves, are you from your records able to say whether they do a firm business or a transit business?

A. We know that there is a very small percentage of transit business done by some of our wholesalers. I would judge, as far as the transit business is concerned, that we sell perhaps, oh, 2 to 3 per cent to people who are transit shippers. However, it is firm business with us, and perhaps another 2 per cent to wholesalers who we know transit particular cars that they buy from us. However, our business with them is definitely on a firm basis.

Q. Then 96 per cent of the business out of your mill is firm business so far as the wholesalers are concerned, is that right?

A. That is true.

Q. The sales by the wholesalers are firm sales by them to the extent of 96 per cent of the products that you manufacture?

A. That would be true.

[fol. 2314] Q. Do you make any effort to restrict your sales to firm business, or is that merely accidental?

A. Well, we make an effort in our marketing policy, as such, to see that our business just doesn't pass through the transit shipper.

Q. Do you prefer the firm business to the transit business?

A. Yes.

Q. Why?

A. Well, being very cold about it, we get more money for it if we don't put it through the transit shipper, for one reason, and, secondly, is that our company policy is one that—isn't one that agrees with the transit method of marketing lumber.

Q. Well, what in your company policy is at variance with the transit method of marketing lumber?

A. In that we feel that it has an adverse effect on the lumber market. That is, we feel it is—at least our belief is such that we do not think that it gives a true picture of the market. At some of your heavy transit points, if there are certain types of lumber in quantity there, it affects the market differently than it would be if all business was on a firm basis.

Q. What is the effect—you talk about a heavy concentration at a transit point. Name one transit point that you have in mind when you make that remark.

A. Take Council Bluffs.

Q. Well, we'll use that as an example. If there's a [fol. 2315] heavy concentration of transit cars at Council Bluffs, as you refer to, what effect does that have on lumber prices?

A. Well, the thing that can very well happen is that, with the heavy concentration of lumber that exists at that point, and a transit operator has perhaps trouble moving it, he'll start dumping on the market, and in turn it may affect the market in a more adverse manner than it would if that lumber had been left at the mill and allowed to move on a firm basis.

Q. Have you given any consideration to the effect of transit methods on car supply?

A. Yes, we've thought of that.

Q. What are your views on that subject?

A. Well, ... view that's accepted by most everybody is, of course, the longer a car is delayed in transit, the fewer cars there are to be used wherever they're needed as empties.

Q. Is that a healthy influence in the lumber business in the Pacific Northwest?

A. Oh, there's definitely times when it affects it, and definitely times when it doesn't. In times of car shortage, we certainly feel that it is instrumental as being one of the reasons for our car shortage.

Q. How many carloads a year do you manufacture and ship out of your mill at Eugene?

A. Oh, a total of around 1250 cars, I believe, in 1954.

Q. Does that include sales anywhere other than in the [fol. 2316] United States?

A. Yes, some export business.

Q. Do you sell continentally, outside of the United States?

A. Well, breaking that down, I presume that's what you want me to do, is break it down. We sold 1014 cars within the continental United States, 38 cars in Canada, 1 in Mexico, and the balance of the cars moved export to foreign countries by ship.

Q. You moved them by rail—what port did they move through?

A. Portland almost entirely.

Q. How do you get the stuff to Portland? By truck or by rail?

A. By rail.

Q. Did you furnish me with a statement of the distribution of your sales by states in the United States for the year 1954?

A. I did.

Mr. Rockwood: I ask that that be marked for identification as Exhibit No. 35, a statement of the character referred to by the witness.

Exam. Dishman: Marked 35.

(Defendant's Exhibit No. 35, Witness Sanderson, was marked for identification.)

By Mr. Rockwood:

Q. I have handed you a copy of a paper marked Exhibit No. 35. Is this a statement of your car distribution as described by me in my previous question?

A. It is.

Q. And it shows on the second page of this exhibit a [fol. 2317] percentage distribution by groups of states. Was that computed by you and prepared by you?

A. That is right.

Q. Before you on the witness stand is a copy of a map introduced in evidence by Mr. Ehlen as Exhibit No. 28. Do you—what is the extent of your marketing at points local to the Milwaukee in the territory shown there in blue on that map and west thereof to Spokane? I'm talking about local sales on the Milwaukee.

A. Well, it's a very small percentage, as the report will show. Principally, the marketing that we do there would be to points in North and South Dakota and, as I recall it, that is comprised of 2 per cent of our total annual business for the past year.

Now, there is a little business down in Iowa. I'll look at these points here and see what it may be in addition to that. We've had one or two cars in addition to that to Iowa destinations.

Q. Shown in blue?

A. Yes.

Q. The Milwaukee destinations shown in yellow on that map, Mr. Ehlen's testimony was to the effect that that could be reached by the northern lines and Minnesota Transfer and Milwaukee on beyond as a connecting line. Do you use that route into Iowa to Milwaukee destinations?

A. We do.

[fol. 2318] Q. What are the—describe generally the routes available, railroad routes available to you for shipments out of your plant at Eugene?

A. Well, being on both the Oregon Electric and Southern Pacific, of course, we have access to both tracks. On the northern lines, we use Oregon Electric, SP&S, GN or NP to the transfer. We use OE, GN, WP, D&RGW. We use OE, GN, WP, AT&SF; we use SP going south to SP connecting lines. We use SP, UP, and have on one or two occasions used SP, UP, Marengo.

Q. SP, UP, Marengo, and thence beyond Marengo what line?

A. Milwaukee.

Q. Have you ever used the Laurel gateway?

A. Frequently. OE, SP&S, NP or GN, Laurel, and thence on south into Texas.

Q. Is your business distributed in varying degrees over all those routes?

A. You mean principal origination, or are you speaking of all of these routes?

Q. Of the routes that you enumerated, do you use all of them in your business, do you?

A. I would say, yes, we use all of them. There are principal uses, but we do use all of them.

Q. You are familiar, I take it, with the rates presently effective from SP&S points via Spokane and the Milwaukee to points on the Milwaukee, as illustrated in this Exhibit 28, the map?

[fol. 2319] A. You're meaning to break down the green, blue and yellow?

Q. No. Are you generally familiar with the rate structure as it applies to Milwaukee points as depicted in various colors on that map?

A. Generally, yes.

Q. Mr. Ehlen testified the other day that the SP&S is preparing instructions to be given to the North Pacific Coast Freight Bureau to publish rates effective from all S&PS stations to all local points on the Milwaukee between Spokane and Mobridge, South Dakota.

If those rates were published in that manner, would you have occasion to use them?

A. Occasionally. Of course, with the small amount of business we do there, it wouldn't affect us a great deal, and we can, as I understand it, get to those points now through Marengo. The only thing, in case of a car shortage, if we had a car moving in there, it might be helpful.

Q. Does your company engage in the business of starting a car out with a partial load and stop it at an intermediate point to complete loading, for shipment on beyond?

A. We have, but our policy is definitely against such. I would say that not over five cars in the year 1954.

Q. Does your company engage in the practice of billing out cars with a partial load—excuse me—I'll start that again—engage in the practice of starting out a car billed [fol. 2320] to stop at one point to partially unload, for movement beyond to another point to complete unloading?

A. Yes, but only in very restricted areas. That is, the method by which we do business restricts the area within which the car would move for a second unloading.

Q. Well, what are the conditions that you impose in carrying out that policy? That is, what are your restrictions?

A. I don't think that we—we don't as a company set a policy that restricts the area. In fact, we do business with most of the wholesalers throughout the United States, and most of the wholesalers that we do business with have areas or spheres of operation, and the mixed car business that they do, that is, where we have partial unloading and completion of unloading, is therefore restricted because their operations are restricted.

Q. Would you—in your business, would you have any occasion to stop a car for partial unloading at any point west of Minnesota Transfer, for completion of unloading at a point, we'll say, east of Chicago or Indiana?

A. I can't think of a time that we've ever done that.

Q. Have you had any experience, when you were called upon to bill a car for partial unloading anywhere in the state of Iowa, for completion of unloading at any point east of Chicago?

A. I can't recall of any time that we've ever met up with that.

Q. Where you do have these mixed cars for unloading at two destinations, what is the fact as to whether the [fol. 2321] contents of the car are a sale to a single customer or are sales to more than one customer?

A. Well, as far as we're concerned, it's to one customer, the wholesaler.

Q. The wholesaler. Do you know, as far as the wholesaler is concerned, whether it is sometimes two customers, or whether it's always a single customer? Do you know?

A. We know because, if it's a double customer, so far as he is concerned, the car would be loaded in lots.

Q. And that sometimes occurs?

A. Occasionally. We may have a car split between two dealers in one community.

Q. Who is responsible for the routing of the cars that you move out of Eugene?

A. We are.

Q. That is, Giustina Brothers?

A. Yes.

Q. You select the routing, rather than the wholesaler?

A. We do unless—there have been times where wholesalers or other customers have given very pointed reasons as to why they would like to have us follow the routing that they list, and, of course, we do try to be reasonable in that respect, but we reserve the right to route the cars that we send out as we see fit.

Q. Are you familiar with the nature of the relief which [fol. 2322] the Milwaukee seeks in this case?

A. Generally, I believe I am.

Q. With the addition of the route from SP&S origins via the Milwaukee at Spokane as requested in this case, would that be of any assistance to your company in the marketing of your products shipped from Eugene?

A. Well, I can't see that it would. We haven't been confronted with any problems, that is, as far as marketing and routing is concerned.

Q. From your experience, have you found the existing routes have been adequate to enable you to market your product?

A. Yes.

Q. There's one point I want to ask you about: Has your company run into the problem ever of disposing of a rejected car by diversion of that car to a point beyond the original billed destination?

A. In my history with the company, we've had no rejected cars. We have had cars, of course, as anyone has had, on which we've had complaints, but we've one policy only in that respect and that is that we get the material off the wheels at the point, and we'll make a settlement with the customer. We have if we find we're in error, and, if not, the customer will accept it as billed.

Q. At Eugene, of course, you, as you said, have available service via the two railroads, the Oregon Electric [fol. 2323] and the Southern Pacific. Are you familiar with the matter of the car supply available at your mill for loading?

A. Yes, we've had, I would say, reasonably good service from all parties concerned. In 1953, of course, we did have a shortage.

Q. In 1953?

A. I believe it was October and November, some time about that period, and we have sporadic shortages of particular kinds of equipment, but usually we'll find the shortage appears first in the Southern Pacific and then will appear, if it's of long enough duration, on the Oregon Electric, but we find that it's much slower coming on on the northern lines than on the Southern Pacific.

OFFER IN EVIDENCE

Mr. Rockwood: You may cross examine. I offer Exhibit No. 35 in evidence.

Mr. Maguire: No objection.

Exam. Dishman: Received in evidence.

(Defendant's Exhibit No. 35, Witness Sanderson, was received in evidence.)

Cross examination.

By Mr. Maguire:

Q. How long has Giustina Brothers been in operation, Mr. Sanderson? Is it an old concern?

A. Since—well, I believe it has been 24 years.

Q. And during that time, the company has built up its own contacts with wholesalers who do business in the [fol. 2324] manner which harmonizes with the policies of Giustina Brothers, so that you have your pattern pretty much set for you now in marketing your output, isn't that true?

A. We have old customers and have new customers also.

Q. And as you say, each of these customers has his own sphere of operation?

A. Yes.

Q. You don't have but a very negligible percentage of your customers who are trying to cover the whole country?

A. Very few.

Q. And with regard to the so-called transit wholesaler, that's the man who deals largely or entirely in transit

cars. That class of business has been growing pretty fast in the Northwest, hasn't it?

A. Well, I don't know if it has or hasn't. I understand that it has.

Q. And the transit operator or the transit wholesaler has been in the picture for a number of years past, however, hasn't he?

A. That, I believe, is true.

Q. Now, in addition to the fact that the transit operators or transit wholesalers' operations sometimes affects car shortages. I believe you said sometimes it does and sometimes it doesn't. Your opposition in principal to the transit business is that it is liable to depress the price at certain markets below the level which has been [fol. 2325] negotiated on sales on a firm basis? Do I correctly quote you there?

A. Well, that isn't my exact thinking, I don't believe. My thinking is that—of course, I believe that the law of supply and demand is the thing that actually governs the market. Our objection, I believe, is that many times we feel that the transit market at particular times will affect the market differently than the law of supply and demand would because the transit market is not a true picture of the law of supply and demand at that time. That's the part that we object to.

Q. In other words, your feeling about it is that so far as the law of supply and demand is concerned, it should be related more to the production figures at the points of production of the lumber rather than the temporary supply which exists at certain points on a certain day, is that it?

A. I believe that's very true.

Q. Well, then, the thing that upsets the apple cart there is that, while the law of supply and demand is still working, your supply suddenly increases all of a sudden at certain points, isn't that what throws your price down, your available lumber at Council Bluffs, for instance?

A. Yes, but that may not be the exact picture of where the supply is. It may be a picture at that point, and someone has to run for cover suddenly, and they do so without giving regard to the picture as it actually exists.

Q. And there may be an excess supply brought about [fol. 2326] by this and other factors, I presume, as well at the other marketing centers or other points where your customers deal?

A. That's right.

Q. And that's what you don't like about it?

A. Yes.

Q. Now, I notice from your exhibit here, and I don't wish to repeat with you, as I said before, but in Montana, for example, you have not made contact with wholesalers who have Montana substantially within their sphere of operation, I presume, have you, because there's only two-tenths of one per cent that went into Montana? Would that be a reasonable assumption?

A. Not necesarily. We have—I imagine that we conduct our business as anyone does. We sell it where the market is the most advantageous. Even though we have contacts in Montana, the price hasn't been satisfactory, as far as we're concerned.

Q. And is the same true as to, let us say, South Dakota where there were only six cars last year?

A. Well, I would say that's true, yes, with the exception, of course, that those points—I think we'll all accept the fact that they're not as densely populated as many points, and, therefore, there isn't going to be as much business there.

Q. Sure. So, your customers—that is, your wholesalers don't monkey with that territory, do they?

A. We have wholesalers that work there.

Q. Now, I notice that in Wisconsin you've only got 1.6 [fol. 2327] per cent of your output into Wisconsin. Would you say that's because Wisconsin is a sparsely populated state?

A. No.

Q. And no market for it?

A. No.

Q. That, I presume, would be because of the way your business is built up, that you just do not sell to wholesalers who operate very extensively in Wisconsin?

A. We have one principal wholesaler in Wisconsin.

Q. In other words, the pattern, so long as you can sell

your lumber and sell it at firm prices and to dealers who specialize in firm sales, you're not too particular yourself what part of the country it's sold in, are you?

A. No.

Q. And so, if you have satisfactory relations with a dealer whose sphere of operations does not include a state, even though it be heavily populated, so long as you're selling, you don't care where he sells it?

A. No, we don't.

Q. On your shipments via the Oregon Electric, which go Oregon Electric, SP&S, Spokane, thence one of the northern lines, how do you distribute your routing to the transfer as between the Northern Pacific and Great Northern? About a 50-50 basis?

A. Perhaps a little heavier to the Northern Pacific.

Q. And is that on the basis of solicitation?

[fol. 2328] A. It's on the basis of where we get the most business, as far as those two lines are concerned.

Q. In other words, you sell to the two northern lines?

A. We do, yes. We sell all railroads. That is, we try to.

Q. Surely, and naturally and probably the people who treat you well, you treat them well?

A. We try to. It's good business.

Q. I think it is.

A. Yes.

Mr. Maguire: I think that's all I have. Thank you.

Mr. Rockwood: I have nothing further.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Rockwood: I'll call Mr. Nordby.

T. W. NORDBY was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you state your name to the Reporter?
A. T. W. Nordby.
Q. And where do you live, please?
A. Bingen, Washington.
Q. In what business are you engaged?
A. Wholesale lumber.
Q. Do you do business through a corporation or in your own name?
A. Sole ownership.
[fol. 2329] Q. In what name do you do business?
A. Bingen Mills and Warehouse Company.
Q. How long have you been in business in the Pacific Northwest in the business of sale and distribution of forest products?
A. I started out with my father about 1923.
Q. How long have you been—was that wholesale business?
A. He had wholesale as well as manufacture until 1939.
Q. How long have you been in business for yourself in wholesaling?
A. Strictly wholesale since 1939.
Q. You're not engaged in any connection with lumber manufacture?
A. No, I'm not.
Q. In what areas or neighborhoods of the Pacific Northwest do you procure the lumber which you handle as a wholesaler?
A. Most of our purchases are made in our local territory around Bingen.
Q. And Bingen is served by the SP&S?
A. That's right.
Q. And it's on the north bank of the Columbia River?
A. Right.
Q. Are there any mills on the south bank of the Columbia River opposite Bingen?

A. We do a considerable business on the Union Pacific at Hood River.

Q. Which is a point on the Union Pacific almost across [fol. 2330] the river from Bingen?

A. Yes.

Q. Do you handle any pine?

A. No pine to speak of.

Q. Do you handle any fir out of the Willamette Valley?

A. Just occasionally.

Q. What are the products principally of the mills for which you act as wholesaler?

A. Green fir, dry hemlock and dry white fir.

Q. What is the process used by you in making sales as a wholesaler to customers east of Bingen?

A. We have contact with direct industrial accounts, some direct retail yards, commission lumber salesmen, and eastern wholesalers.

Q. Do you engage—you've heard the talk here about firm and transit cars. Do you engage in business as a wholesaler of firm cars or wholesaler of transit cars?

A. We do practically a firm business, but we probably might have 5 or 10 per cent, something like that, transit.

Q. In a year's time?

A. Yes.

Q. And how many cars do you handle a year as a wholesaler?

A. We handle in the neighborhood of a thousand cars a year.

Q. You're talking of "we" all the time. Do you mean "I do"?

A. I do.

[fol. 2331] Q. Sure. You and your office force?

A. That's right.

Q. Do you sell east of Chicago?

A. Yes.

Q. How is your business divided between east of Chicago and west of Chicago? Can you tell us?

A. I would estimate that we sell probably around 20 per cent east of Chicago.

Q. And the balance of 80 per cent would be west of Chicago?

A. Yes.

Q. East of Chicago—well, including Chicago and east, are there any certain lumber markets or communities in which you have substantial parts of your business?

A. It would vary from year to year. Last year, it was mostly in Ohio, Pennsylvania, and Michigan.

Q. And some right in the Chicago area?

A. Oh, yes, some in the Chicago area.

Q. What are your best markets west of Chicago?

A. Well, our best markets west of Chicago are Minnesota, Nebraska, Missouri, and Colorado.

Q. Approximately where, moving east out of Bingen, from the mills that you sell for, where does your market begin?

A. Well, if we go through the Laurel gateway, some will go down into Colorado and some into Nebraska, probably some into Missouri that way. The rest of it starts in—most [fol. 2332] of it would be—we do quite a little business around Minneapolis, right in the Minneapolis territory, and it goes on into—some into Wisconsin, Michigan, and so forth.

Q. Do you do any business in South Dakota?

A. Very little; just once in a great while.

Q. Do you do any business in Iowa?

A. Not much, no.

Q. Missouri?

A. Yes, we do a little business in Missouri.

Q. What portion of Missouri? Could you define it?

A. Oh, I couldn't guess at that; just down into the state of Missouri.

Q. Are you familiar with the route from Bingen via the SP&S?

A. Yes.

Q. And the Milwaukee beyond?

A. Yes, generally speaking.

Q. Are you familiar with the route of Union Pacific, Marengo, Milwaukee beyond?

A. Generally speaking, yes.

Q. Do you ever use that Marengo route from Union Pacific sources?

A. We have used it occasionally.

Q. Can you recall the community at which you have made sales on which cars have moved over that route?

A. No, I can't. It was sent to some Milwaukee point.

Mr. Maguire: I didn't get that last. Some Milwaukee point?

[fol. 2333] The Witness: Some Milwaukee point, it went to.

By Mr. Rockwood:

Q. Are you generally familiar, or are you generally responsible for the routing or the checking of the routing on cars handled by you as a wholesaler?

A. Yes, sir.

Q. Out of the mills served by the SP&S on the north bank of the Columbia River, served solely by the SP&S, east of Vancouver, what routes do you use for your eastern movements?

A. We would use SP&S, GN or NP.

Q. Minnesota Transfer?

A. Yes.

Q. And via the Laurel gateway? I think you mentioned that.

A. Yes.

Q. And the Burlington beyond?

A. Burlington.

Q. From your sources of supply on the Union Pacific on the south bank of the Columbia River, what routes do you use?

A. Union Pacific all the way through, as far as they go, to Council Bluffs.

Q. Generally, you give the Union Pacific its long haul to Council Bluffs?

A. Yes.

Q. Do you make any purchases at points served by the Southern Pacific?

A. We have occasionally bought some cars that came off [fol. 2334] the Southern Pacific.

Q. Do you recall what routes you used for such purchases?

A. That went SP, UP, out of Ogden, I believe.

Q. You have before you a map introduced by Mr. Ehlen as Exhibit No. 28, which shows geographically the application of rates from SP&S points to local points on the Milwaukee east of Spokane.

Are you generally familiar with the application of rates over that route?

A. Generally.

Q. Have you in the past had occasion to use that route via the SP&S, Milwaukee?

A. The SP&S, Spokane, Milwaukee?

Q. Yes.

A. We have done that occasionally.

Q. Do you do any business off the Santiam Branch of the Oregon Electric out of Albany?

A. I think we probably might have had three or four cars in the last four or five years out of there. You might say nothing.

Q. Has your business off the Santiam been of a volume sufficient so that you are concerned particularly with the application of rates from the Santiam Branch of the Oregon Electric?

A. No.

Mr. Maguire: The witness says it's practically nothing.

Mr. Rockwood: He might have an interest though.

[fol. 2335] Mr. Maguire: Well, I won't argue that.

Mr. Rockwood: I didn't think you would.

By Mr. Rockwood:

Q. Do you handle any business where a car is started out from a mill with a partial load and stopped at another point to complete loading, and thence moved on?

A. We have had maybe two or three or four cars a year.

Q. What is the stop point for completion of loading on those cars?

A. Ours has been very limited. They originate at Bingen and stop at Klickitat, stopped and finished there.

Q. Do you do any business of starting a car out billed to one point for partial unloading, for movement on to another point to complete unloading?

A. It happens so rarely that it wouldn't amount to anything.

Q. What has been your experience in the matter of rejection of cars by the customer at the billed destination with the necessity of diverting a car of that character on to another destination?

A. We've only had one experience, one car last year.

Q. In what territory was it?

A. That car was in Ohio. It was rejected and refused, and our commission salesman, that we worked with there, arranged a sale for it about 200 miles away, and we paid the local freight to get it out of there.

Q. Just one in the last year?

[fol. 2336] A. Yes, sir.

Q. Would the addition—are you familiar generally with what the Milwaukee is asking for in this case in the way of additional routes?

A. Yes, sir.

Q. Would the addition of that route, as requested by the Milwaukee, be of any assistance to you as a wholesaler in disposing of the products which you handle?

A. We don't think so.

Q. Are the present routes and rates available on the cars for which you act as wholesaler such that they enable you to do your business?

A. Yes, sir.

Q. As a wholesaler, do you keep informed as to the car supply situation at the mills in the Bingen area and the mills along the Union Pacific on the south bank, with which you do business?

A. Yes, sir.

Q. What has been the experience of those mills as you've observed them in the matter of car supply ordered from the SP&S on the north bank of the river?

A. We've been better satisfied with SP&S than any of the lines.

Q. Have you had any car shortage on the SP&S in the last couple of years?

A. None.

Mr. Rockwood: You may cross examine.

[fol. 2337] Cross examination.

By Mr. Maguire:

Q. Did you ever have any before that time?
A. Prior to that time?
Q. Yes.
A. Yes.
Q. On the SP&S?
A. Yes.
Q. Now, Mr. Nordby, as I get it, being a business man, you are primarily interested in selling whatever lumber is available to you as a wholesaler, isn't that it?
A. Yes, sir.
Q. And it doesn't make any difference to you in what states you sell it, so long as it's sold at a proper price, am I correct about that?
A. Well, I would assume that it doesn't make a great deal of difference where you sell it. You have some friends some place. It makes that difference, that you want it to go to your friends.
Q. Sure, and your contacts are such, among your wholesalers to whom you sell firm, as well as the retail yards, the industrial plants, and commission dealers, your contacts are such that you have had no difficulty in selling the products for which you were responsible, isn't that true?
A. Well, a fellow would always like to do more business, I presume, but we've gotten by fairly well for a small concern in our community.
[fol. 2338] Q. Sure. So, for handling the business that you have had, you have adapted your business, naturally, to the routes and the rates which have been open to you in the past, haven't you?
A. Yes. We have sold our lumber where our rates would apply.
Q. Now, I notice that Mr. Rockwood's question about rejected shipments was limited to shipments rejected at destination. Have you had any cancellation of orders while the car was en route on account of an alleged difference in the tally or a deficiency in the tally or an over-supply in the tally?

A. Well, I presume that might have happened some time or other, but I haven't had any recently.

Q. From your statement that you conducted largely a firm business, I gather that, if you deal in any so-called transit cars, that is an exception, rather than the rule?

A. The business is mostly firm, yes.

Q. And that is the business you prefer to engage in, isn't it?

A. Well, I don't know. We did a lot of transit business a few years ago and it was an easy business, and I never did object to that easy business because—well, it grows more difficult at times, but I wouldn't say I preferred one as against the other.

Q. But under the present circumstances, you'd rather stick to your firm business than your transit business?

A. Well, we do that at the present time.

Mr. Maguire: That's all I have. Thank you.

[fol. 2339] Mr. Rockwood: Just one more point.

Redirect examination.

By Mr. Rockwood:

Q. You say that prior to the last couple of years you had some shortages on the SP&S. How long ago was that?

A. I just forget when that shortage was, but it seems to me it was about five or six years ago when it was acute all over the Northwest, particularly south of Portland. At that time, we fared better than most anybody, as far as that goes, because we were getting some cars right along, but we did have a little shortage. We could have used more than was available for a short while.

Mr. Rockwood: That's all.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Rockwood: I'll call Mr. Quirin.

ARTHUR F. QUIRIN was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Where do you live, Mr. Quirin?

A. Dallas, Oregon.

Q. And did you state your full name to the Reporter?

A. My full name is Arthur F. Quirin.

Q. Dallas—D-a-l-l-a-s—Oregon?

A. Yes.

[fol. 2340] Q. In what business are you engaged?

A. I'm General Sales Manager of the Willamette Valley Lumber Company in the production of lumber.

Q. Where are the plants of Willamette Valley Lumber Company located?

A. We have our parent company, the largest plant is at Dallas, Oregon, known as the Willamette Valley Lumber Company; another plant in Corvallis, known as the Corvallis Lumber Company; and the Willamette National Lumber Company at Foster, Oregon; and that's it.

Q. Do you have a plywood plant somewhere?

A. We have a plywood plant at Lebanon, Oregon. I do not sell directly all the cars for them. I sell part cars for them.

Q. By what railroad is Dallas served?

A. The SP.

Q. By what railroad is your plant at Corvallis served?

A. It's the SP.

Q. By what railroad is your plant at Foster served?

A. Oregon Electric.

Q. On what branch or line of the Oregon Electric is Foster located?

A. The Santiam Branch.

Q. From Albany up through Lebanon, Sweet Home, on to Foster?

A. Yes.

Q. Is Foster the end of the line at the present time?

[fol. 2341] A. That's as far as it goes now.

Q. How many years have you been with the company?

A. I've been with the company since March of 1946.

Q. Does your company engage in business as a wholesaler or as a manufacturer, or a combination of both?

A. As a wholesaler—as a manufacturer—pardon me—only with the exception that occasionally we'll get in trouble and will need certain items that we don't make enough of, and we have to buy from other mills.

Q. When you do that, do you buy in the Willamette Valley?

A. Generally speaking, in the Willamette Valley, most of it, practically all of it.

Q. And those would be fir items that you want?

A. Fir. Sometimes we might want hemlock. We have bought some in Washington, but our rate setup, and so on, in Washington and the origin on the cars we would buy and also the source of the material are not such that it's conducive to do it. Let's put it that way.

Q. You're not in any general wholesale business, are you?

A. No; that's true.

Q. Just to fill out an order occasionally?

A. Yes, that's true, just in case of necessity.

Q. How do you—through what outlets do you sell your lumber?

A. We sell a few industrials throughout the country. Basically, those are related here in the Northwest with [fol. 2342] some particular type of manufacture in the east. The bulk of our lumber, however, is sold through wholesalers, about 97 or 98 per cent of it to the wholesalers.

Q. The sales to wholesalers are firm by you, and you're paid right away on shipment, aren't you?

A. That is correct.

Q. Now, these wholesalers with whom you deal, are they themselves engaged in the transit business or in the firm business?

A. We frown very much on transit type wholesale operators. We practically never sell them. We sell on firm business only, as far as any we know. Some of the wholesalers, as some of the other people stated earlier, may have a few cars that they will, say, for convenience buy, or maybe the price might be such they can't refuse it.

Q. Why do you frown—using your own word—on the transit operator?

A. Well, we have a good many million dollars invested in our operations, and it would be foolish for us to take the gamble of a transit operator or a transit type wholesaler and let him set our market for us. We make a quality product, and we pride ourselves in entering solid, firm connections all the time.

As some light on that, I might say during the depression we worked three shifts—two shifts, rather, when other mills were operating two or three days a week. We couldn't make enough. So, we do feel we have a very high quality [fol. 2343] type of product. Naturally, we want to sell ourselves in our own market at the best price to the people that we want to distribute to the best way we know and control it better.

Q. Approximately how many carloads of lumber are moved out of the three mills that you spoke of, Corvallis, Dallas, and Foster in a year?

A. Well, we moved 5,311 cars.

Q. How were those distributed between your three mills?

A. I beg your pardon. It was 5,565 cars, counting export and everything.

Q. How are those distributed between the three mills? Do you have that figure?

A. Yes, I have that. The Willamette Valley Lumber Company of Dallas moved 2,259 cars last year. The Willamette National Lumber Company at Foster moved 2,326 cars last year, and the Corvallis Lumber Company at Corvallis, Oregon, moved 980. The Corvallis mill and Dallas mill were on strike for 11 weeks, which made a shortage in shipping materials last year.

Q. Which mills were on strike?

A. The Willamette Valley and the Corvallis mills.

Q. At Foster, you were not down during the strike last summer?

A. No.

Q. How is your product distributed between species?

A. About 70 per cent—70 to 72 per cent fir, about 26 or so—along about—approximately 26 per cent hemlock, and [fol. 2344] about 1 per cent pine, and about 1 per cent cedar.

Q. In what mill do you produce pine?

A. We produce pine at both Willamette National Lumber Company and Willamette Valley Lumber Company at Dallas.

Q. Willamette National up on the Santiam?

A. Yes.

Q. Do you have some pine up in that area?

A. It's very fine pine.

Q. And have you a tabulation of the distribution of your lumber by states of the United States?

A. Yes, I have.

Q. This I've never seen before. Have you one for the—

A. I certainly can have more made.

Q. This is for the Santiam?

A. This is one for the Santiam. This is Willamette Valley and—

Q. You have additional copies of these three statements that you've handed me?

A. I don't have them with me. I could certainly get more made for you.

Mr. Rockwood: I have not seen these particular documents before, Mr. Examiner, and I don't have copies of them, but it's made with a hectograph or ditto process.

By Mr. Rockwood:

Q. Could you supply me with, say 15 more sets of each one of these?

A. I'd be very happy to.

[fol. 2345] Exam. Dishman: Do you want to submit it as a late filed exhibit?

Mr. Rockwood: If I may—if Your Honor please, I'll have these marked right now.

Exam. Dishman: Do you have copies available?

Mr. Rockwood: No. There will be copies later.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Rockwood:

Q. Now, your distribution of sales out of the Foster mill, do they follow substantially a pattern of your distribution out of all the mills?

A. Basically, yes.

Mr. Rockwood: Then I would like to have marked for identification as Exhibit No. 36—

Exam. Dishman: Can you leave a copy of that with the Reporter?

Mr. Rockwood: I'm going to leave this copy with the Reporter, and then Mr. Quirin will supply me with additional copies which I will distribute.

Exam. Dishman: It will be identified as Exhibit No. 36.

(Defendant's Exhibit No. 36, Witness Quirin, was marked for identification.)

By Mr. Rockwood:

Q. This Exhibit No. 36, Mr. Quirin, is entitled "Willamette National Lumber Company, Distribution of Lumber Shipments", December, 1954, and Year to Date, and it is [fol. 2346] of three pages. I take it you can supply me with about 15 copies?

A. I can do that.

Q. Which I'll distribute to my friends.

Mr. Maguire: Your opponents too?

Mr. Rockwood: No; they're all my friends.

By Mr. Rockwood:

Q. Is that Exhibit No. 36 a correct statement of your distribution of products of the mill at Foster on the Oregon Electric in the year 1954?

A. Barring any possible clerical errors, it is a correct statement of our cars out of Foster.

Q. On the table here before you is a copy of a map, which was offered in evidence by Mr. Ehlen of the SP&S, showing pictorially the application of rates from points on the SP&S to points on the Milwaukee local territory east of Spokane.

From your mill at Foster, do you have any substantial distribution of your products in territory local to the Milwaukee included in the stations colored in blue on that map and west thereof to Spokane?

A. You ask: Do we have any trouble?

Q. No. Do you have any substantial portion of your business into that area?

A. No, we haven't.

Q. To those Milwaukee stations?

A. The other lines, Northern Pacific and GN, both cover [fol. 2347] the area pretty well, in conjunction with the CB&Q. We get in there without any trouble.

Mr. Maguire: I don't believe that is quite a response to the question, is it?

By Mr. Rockwood:

Q. Do you do any substantial business to those local points?

A. To these very same points as shown here?

Q. Local points of the Milwaukee?

A. Why, I would have to check the destinations of all the cars, if any of these towns were also served by any of the other railroads. I couldn't state that right offhand. I'm not that familiar with the points that are served by the other railroads.

Q. But in any event—

A. There's very little in the area any way. I'll say that.

Q. It has been testified here that the rates to these Milwaukee local points do not apply from points on the Santiam Branch, which are shown colored red in the map of the SP&S System in the lower left hand corner of that exhibit, Exhibit 28. It has been testified further that directions have been given to the Transcontinental Freight Bureau to publish rates from stations on that Santiam Branch to Milwaukee local stations east of Mobridge, South Dakota, on the same basis as now apply from SP&S points, such as Albany, Salem and Eugene, to those points on the Milwaukee east of Mobridge.

If those rates were so published from the Santiam [fol. 2348] Branch, would you find that of some advantage

in disposing of your lumber from the Santiam Branch at Foster?

A. Well, I don't think it would make much difference. We haven't had any trouble so far. It might be all right, but we move our lumber in the area satisfactorily now.

Q. What routes are customarily used for shipments of lumber—incidentally, the Foster mill is served only by the Oregon Electric?

A. That's right.

Q. What routes are customarily used by you in the shipment of lumber from your Foster mill?

A. Well, the three basic routes, OE, GN—OE, SP&S, GN; OE, SP&S, NP; OE, SP&S, GN—pardon me—OE, GN, WP, D&RG, and lines from there.

Q. That's through the Bieber gateway?

A. Through the Bieber gateway, yes.

Q. Now, what gateways do you use on shipments moving via the northern lines east of Spokane, either Great Northern or Northern Pacific? What gateways do you use?

A. Well, it goes through Portland and Spokane.

Q. What—

A. On east, you mean?

Q. For movements beyond the northern lines.

A. Well, it goes through several of them. It might go through Minneapolis, Minnesota Transfer. It might go [fol. 2349] through Laurel and CB&Q. It might go down through—well, I guess that's—it might go on to Chicago or—

Q. Well, that's beyond. Minnesota Transfer and the Laurel routes are the principal ones?

A. Yes.

Q. Do you have occasion—I think you have said there were some occasions where you would either complete loading at one of your plants, or start a car out from one of your plants to complete loading at another plant?

A. Very possible. Also, we may buy a part of a car that we will sell that would be applicable to this final destination. We may stop off for some pine somewhere that we don't have.

Q. Are cars started with fir from your mills, from your

Foster mill, to complete loading with pine east of the mountains?

A. Yes.

Q. Have you ever had any difficulty in finding pine in the territory east of the mountains to complete loading?

A. Well, I have never had to do it myself. Of course, the wholesaler usually puts that together. He handles the mill there and our mill, and he doesn't have any trouble.

Q. So far as you know?

A. We haven't any trouble.

Q. Has there been any difficulty in that respect?

A. He hasn't had any trouble.

Q. Do you engage in the practice of starting a car out [fol. 2350] billed to one destination to partially unload with completion of unloading at another destination?

A. Yes. We load quite a few cars like that.

Q. In what territory is that practice most common?

A. Most of it would be east of the Mississippi at least. In fact, probably it would be in Official Territory or possibly down in the southeast.

Q. Have you any problem with respect to the distribution of a car rejected at one destination involving the movement of that car to another destination for disposal?

A. No, none whatsoever.

Q. You are familiar with what the Milwaukee has asked for in this case, for an additional route?

A. Yes, I am.

Q. Would the addition of that route, now requested by the Milwaukee, be of any assistance to your company in the marketing of your products, particularly from the Foster mill?

A. I can't see that it would help us any.

Q. Are your existing routes available at the Foster mill adequate to enable you to dispose of your product?

A. Quite so.

Q. The Foster mill being served only by the Oregon Electric, you depend on the Oregon Electric, I take it, for car supply?

A. That's correct.

Q. What has been your experience at Foster in the matter [fol. 2351] of obtaining cars for loading?

A. We haven't had any particularly big trouble there. Of course, there have been periods, when they were short on all lines, that we might not get the exact type of equipment that we needed just that day, but in a matter of two or three days we haven't had any trouble. Sometimes we have a hard time getting these end door box cars because there aren't very many of them made, but you can get them in a matter of a few days.

Q. I don't want to make odious comparisons, but have you had—what has been your experience at Foster as compared with your experience at some of your other plants?

A. Well, everything looks very nice and rosy over there when it comes to cars. We've had cars.

Q. At Foster?

A. Yes.

Mr. Rockwood: You may cross examine.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Cross examination.

By Mr. Maguire:

Q. Now, what wholesaler is it that handles the greater part of your output? Is it the Cascade Pacific Lumber Company?

A. Which one handles the most lumber, you mean?

Q. Yes.

[fol. 2352] A. Well, they run close. I'm not sure if they're first or second or third. There are three top wholesalers that move a large volume.

Q. And have you been in the court room and heard the testimony of the other gentlemen that have been on the stand today?

A. Well, some of them this morning. Which ones do you mean?

Q. Well, for example, Mr. Sanderson of the Giustina Brothers Lumber Company?

A. I was sitting in the back of the room, and I couldn't hear.

Q. You couldn't hear much of it?

A. Yes, I couldn't hear very much of it.

Q. I guess it was pretty hard. I gather that your company is very definitely against the trend toward the so-called transit operations.

Mr. Rockwood: Excuse me. There's no evidence in the record that there is a trend toward transit operations.

Mr. Maguire: There's plenty of evidence in the record. The witness before this one said that it was growing stronger all the time, one of your own witnesses on cross examination.

Mr. Rockwood: He said it had increased in the last few years, since 1947.

Mr. Maguire: Well, there is a growing trend then.

Mr. Rockwood: Is that your testimony then?

Exam. Dishman: Off the record.

(Discussion off the record.)

[fol. 2353] Exam. Dishman: On the record.

By Mr. Maguire:

Q. You do not approve of the trend, whether it is growing or static or what it may be, with regard to transit operators, is that right, for the reasons that you've already stated?

A. As I stated earlier, if you have several million invested, you're going to take care of it yourself the best way you know how.

Q. And your objection to the transit operator, as I get it, then, is that he may at one point or another—you're never just sure where—send in an over-supply which will reduce the price that the public pays, is that it?

A. It may in the area where his supply is. It may not be in the same general territory.

Q. And it won't have any effect elsewhere?

A. No.

Q. I have noticed that in the routings that you have given Mr. Rockwood that in practically all cases, of course,

the Oregon Electric starts naturally because that's the only railroad serving your Foster plant, but, after it gets off the Oregon Electric or the SP&S, as the case may be, your routes are invariably involving either the Great Northern or Northern Pacific, or both of them, and the Burlington, isn't that true?

A. Basically. We route some cars Oregon Electric to Lebanon, then put them on the SP.

[fol. 2354] Q. Those are bound, however, to destinations not competitive with either the Northern Pacific or Great Northern, isn't that true?

A. That's right.

Q. But wherever either the Northern Pacific or the Great Northern can get a haul out of it, your policy is to route it over those lines?

A. That is correct.

Q. And is there anything in connection with the supply of logs to your mill, the source of your timber, which requires that routing?

A. No.

Q. Your mill does buy—at Santiam does buy logs which originate in the so-called Hill tract?

A. That is correct.

Q. Which is a trust of the descendants or relatives of James Hill of the Great Northern?

Mr. Rockwood: That's not right. It's Louie Hill.

Mr. Maguire: Well, Louie Hill.

Mr. Rockwood: Louie Hill owned the timber, not James. Louie is the son of James.

Mr. Maguire: Well, I say they are the descendants of James.

By Mr. Maguire:

Q. So, any connection between the source of your timber and the routing of your outbound lumber is purely coincidental, is that it?

[fol. 2355] A. Basically so, yes.

Mr. Maguire: That's all. Thank you.

Redirect examination.

By Mr. Rockwood:

Q. So far as you know, does Louie or any of the descendants of Louie Hill have any connection with the Great Northern or Northern Pacific?

A. Well, I have read quite a bit, but I can't answer that. I understand they do, yes.

Q. They're descendants of James J. Hill?

A. Yes.

Mr. Rockwood: That's all.

Exam. Dishman: Do you want to offer this exhibit then?

Mr. Maguire: I beg your pardon. I just wanted some—

OFFER IN EVIDENCE

Mr. Rockwood: Yes, I'll offer it.

Mr. Maguire: No objection to the exhibit.

Exam. Dishman: The exhibit is received.

(Defendant's Exhibit No. 36, Witness Quirin, was received in evidence.)

Mr. Maguire: I have one other question.

Recross examination.

By Mr. Maguire:

Q. Mr. Quirin, I notice here you have three columns of figures for December, 1954, and then you have three columns that follow that headed "Year to Date".

A. That is correct.

Q. Is that the year 1954 up to and including December?

[fol. 2356] A. 1954.

Mr. Maguire: I see. Fine.

Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: We will recess until 2 p.m.

(Whereupon, at 12:35 p.m., a recess was taken until 2:00 p.m., of the same day.)

[fol. 2357] AFTERNOON SESSION 2:00 p.m.

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Rockwood: I'll call Mr. Bowman.

W. R. BOWMAN was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you please state your name to the Reporter?

A. W. R. Bowman.

Q. And where do you live?

A. Sweet Home.

Q. In what business are you engaged?

A. Lumber.

Q. What is the name of the company with which you are associated?

A. Bowman Lumber Company.

Q. And what is your capacity with the company?

A. President.

Q. And in what type of business does Bowman Lumber Company engage? Manufacturer, wholesaling, or what?

A. Manufacturing.

Q. It owns its own sawmill?

A. We have a sawmill, but it's operated under a separate corporation.

Q. What is the name under which you operate that sawmill?

A. Bowman Sawmills, Incorporated.

[fol. 2358] Q. Where is the plant located?

A. The sawmill?

Q. Yes.

A. Foster.

Q. Do you have any other plant, other than at Foster?

A. I have a remanufacturing plant at Waterloo.

Q. Now, Foster is on the Oregon Electric at the extreme end of the Santiam Branch?

A. That's right.
Q. Where is Waterloo?
A. That's on the Oregon Electric.
Q. On the Santiam Branch?
A. Right.
Q. Do you have any establishment at Lebanon?
A. Yes.
Q. What is at Lebanon?
A. That's the Bowman Lumber Company.
Q. The Bowman Lumber Company at Lebanon?
A. Yes.
Q. Now, at Lebanon, what railroad are you served by?
A. By the Oregon Electric and the SP.
Q. And at Waterloo and Foster, by what railroad are you served?
A. Oregon Electric.
Q. Solely Oregon Electric?
A. Yes.
[fol. 2359] Q. How long have you been in the business of manufacturing and selling and disposing of lumber products?
A. Nine years.
Q. How do you dispose of the products which you manufacture?
A. Sell it all to western wholesalers.
Q. Are those sales by you to wholesalers firm sales by you, or do you sell—
A. They're all firm sales.
Q. You don't sell on commission to the wholesalers?
A. No.
Q. Now, do you know the nature of the business done by the wholesalers with whom you deal, whether they engage in firm sales or transit sales, or a combination of both?
A. Well, I'd say it's a combination of both, yes.
Q. Do you have records of your own—do you get any record back of the movement of the cars by rail after the car is moved?
A. I get the freight bill, yes. I get the movement of the car.
Q. After the car has moved?
A. Yes.
Q. Do you bill the car out at your plant?
A. Yes.

Q. From those two records, the original bill of lading and the freight bill, are you able to form any opinion as to whether your wholesaler is engaged in transit business or in firm business?

[fol. 2360] A. Yes, I can tell usually by the routings if they're moving in transit.

Q. Can you give us any estimate as to the extent to which your wholesalers transit your cars, the extent to which they sell them firm?

A. Well, I would just make a guess that there probably isn't over 10 per cent of my production that actually goes into transit.

Q. The balance is firm sales?

A. That's right.

Q. How many cars of forest products do you ship per year?

A. Well, last year we shipped—going by last year's shipments, we shipped between 15 and 18 hundred cars.

Q. What is the general description of the product which you sell?

A. It's mostly all green fir dimension lumber.

Q. Do you sell some hemlock?

A. Yes, a small amount.

Q. What is—in what territory of the United States are your sales made, the sales of your products?

A. Well, most of the cars end up on the east coast somewhere.

Q. Do you sell in California?

A. Yes. I ship boards to California.

Q. Except for the shipments to California, can you give us any notion of what per cent of your output goes, we'll [fol. 2361] say, east of and south of Minnesota Transfer?

A. East and south? Would that take in Texas?

Q. Yes, and into the southwest through Minnesota Transfer or through Laurel?

A. Well, I would say on that that probably, oh, I'd say at least 85 per cent of my total production would go into that area.

Q. East and south of the Minnesota Transfer into the southwest?

A. Yes.

Q. Does any of your production go into the states of North and South Dakota and Iowa?

A. Very little.

Q. Mr. Bowman, I show you a map, which is a copy of Exhibit 28, presented by Mr. Ehlen. Have you seen a copy of that before?

A. Yes, I have.

Q. I call your attention to the local territory of the Milwaukee colored in blue, which starts not far from the Iowa-Dakota line, including some in Minnesota, and some up in North Dakota. In the territory colored blue and extending west to Spokane, do you sell any of your production in that area?

A. I'd say that a very small amount of it goes in there.

Q. What rail routes do you use on your shipments from your plants which are served solely by the Oregon Electric?

A. Well, we go OE, SP&S, GN or NP; or, going south, we'd use OE, GN, WP.

Q. Western Pacific?

[fol. 2362] A. Western Pacific.

Q. That's south through Klamath Falls and Bieber?

A. That's right.

Q. Do you use the Laurel gateway?

A. Yes, we do on some of our material, yes.

Q. CB&Q beyond Laurel?

A. That's right.

Q. What routes do you use out of the Lebanon plant?

A. We would route the—use the same OE routings as we'd use off of the OE up at Waterloo, plus the fact that we'd have the SP, although we could use SP right on through—SP, UP, D&RGW.

Q. Did you ever hear of an SP, UP route through Marengo, Washington, thence Milwaukee?

A. I've heard of that on the Milwaukee, going through that way.

Q. Have you ever used that route?

A. I think we've had occasion to use it a few times, yes.

Q. Are you generally familiar with the existing rates on lumber from SP&S points, including the Oregon Electric, as shown on that map of Mr. Ehlen's to territory on the

Milwaukee east of Spokane? Are you generally familiar with that?

A. East of Spokane?

Q. East of Spokane on the Milwaukee as illustrated on that map?

A. Well, I've had it explained to me, yes, but, to go into details, I don't know whether—

Q. Do you know whether from the Santiam Branch, in- [fol. 2363] cluding Waterloo, the rates apply via Spokane on the Milwaukee?

A. No, they don't.

Q. Mr. Ehlen has already testified that instructions have been issued to the Transcontinental Freight Bureau to publish rates from the Santiam Branch of the Oregon Electric to Milwaukee local stations east of Mobridge on the same basis as now apply from Oregon Electric main line points, such as Salem, Albany and Eugene, to the Milwaukee territory east of Mobridge.

Mr. Maguire: Just a moment. Mr. Examiner, I believe Mr. Ehlen's testimony was that that has been docketed with the Transcontinental Freight Bureau, but not that instructions have been issued.

Mr. Rockwood: Instructions have been issued. All right, your terminology is probably better than mine. The testimony, I believe, is that the Great Northern and Northern Pacific have—

Mr. Maguire: Have docketed it.

Mr. Rockwood: Whatever you want to call it. They've told the Transcontinental Freight Bureau that they'd like to have them go ahead. Now, you can call it what you want.

Mr. Maguire: No, that isn't exactly it. They have asked them to place it on the docket at the request of some lumber company in Iowa. That was the testimony because the Great Northern and Northern Pacific or the SP&S can't order the Transcontinental Freight Bureau to publish any [fol. 2364] rates. They have to be docketed, but it's a matter of detail.

Mr. Rockwood: The instructions have been issued by the Great Northern and Northern Pacific, and it will now go on the Transcontinental Freight docket.

Mr. Maguire: That is fair enough, yes. It will go on the docket.

Mr. Rockwood: All right, what more can we do?

By Mr. Rockwood:

Q. Do you ever start a car out from one of your mills partially loaded with a stop to unload at some other point?

A. You mean a stop to complete loading?

Q. Stop to complete loading. Excuse me.

A. Yes, we do.

Q. Where do you start such cars, and where do you complete loading them?

A. Well, we can start those cars at either point, either off the OE at Waterloo, or off the OE and SP at Lebanon. As far as completion of loading of those cars, of course, those details are worked out by the wholesaler, and that could vary quite a little as to where they would actually stop.

Q. Do you know—can you tell from the bills of lading that have been made out on those cars where they do go to complete loading?

A. Oh, yes.

Q. Where are the complete loading points on such cars? [fol. 2365] In what territory generally?

A. It would be right on the west coast somewhere.

Q. Would they be east of the Cascade Mountains, or west of the Cascade Mountains?

A. I think in my case it will always be on this side, on the west side.

Q. Does your company start cars out billed to stop at some point for partial unloading, for completion of unloading at another point?

A. We do, yes.

Q. In what territory does that occur, so far as your shipments are concerned?

A. That could occur in any territory we ship to. Of course, most of our shipments are to the east coast. It would happen more often back there.

Q. When you say the east coast—

A. I'm speaking of east of Chicago.

Q. East of Chicago?

A. Yes.

Q. Into what some people have called the blanket rate territory?

A. That's right.

Q. Have you ever had any experience on a rejection of one of your cars by a customer with the necessity of moving that car to a destination other than that to which it was first billed?

A. Yes, I've had that happen a few times.

[fol. 2366] Q. How frequently has that happened?

A. Well, it will happen very seldom as far as the number of times. It wouldn't happen more than a few times a year. There may be times when a customer might say he's rejecting the car, but, actually, most of the time, why, you work out an arrangement where he does accept the car.

Q. Without the necessity for diversion to another destination?

A. That's right.

Q. Well, now, eliminating those where you can dispose of the car without diversion to another destination, how many rejections will you have in a year where you would have to divert to another destination?

A. As I recall—I don't know—I had one or two of them last year.

Q. Do you recall in what part of the United States that was?

A. Both of those were east of Chicago.

Q. Are you familiar generally with what the Milwaukee is requesting in this case in the way of additional routes via the SP&S?

A. Yes.

Q. With connection at Spokane?

A. Yes.

Q. Would the addition of the route, as now requested by the Milwaukee, be of any assistance to your company in the marketing of your products from your mills?

A. I can't see any advantage now since we have facilities [fol. 2367] of getting off the Santiam Branch to these other territories. There would be no advantage that I know of, no.

Q. If those Santiam rates became effective?

A. Yes.

Q. Would the existing routes, with the addition of this Santiam route, be adequate for all your purposes?

A. It sure would.

Q. Are you familiar with the ordering of cars for shipment from your plant?

A. Yes.

Q. Tell me what your experience has been with respect to car supply at your plants served solely by the Oregon Electric.

A. Well, we've had some aggravations in the last period of seven or eight years, but, as a whole, I don't think we've had too much to complain about on the car supply situation.

Q. From whom do you order the cars for shipments out of Lebanon?

A. From the SP depot.

Q. On the cars that go out of Lebanon on the Oregon Electric, from what railroad do you order the cars?

A. Well, we still order the cars from the SP depot. In other words—you know more about this maybe than I do—as I see it—

Q. No, I don't.

A. As I see it, I think the Oregon Electric and the SP have a working arrangement where they work through the [fol. 2368] same depot there, and so all the business, even for the Oregon Electric, is transacted through the SP depot.

Q. What has been your experience on car supply at the Lebanon plant?

A. We've had very little trouble.

Mr. Rockwood: You may cross examine.

Cross examination.

By Mr. Maguire:

Q. Referring to these cars which you have to divert, if you have to do that, do you find that the right to divert, under circumstances where you can't make a settlement with the original purchaser, is a benefit to you?

A. Well, of course, the thing is this: The cars that I would have rejected would already have been placed in the customer's possession.

Q. Yes, but you said once or twice last year you did divert a car which had been refused?

A. No, I didn't divert. I had to pay the local freight rate to the next point.

Q. Oh, I see. Both of those had been rejected by the customer after being partially unloaded?

A. That's right.

Q. Do you deal through a large number of wholesalers or a small number?

A. We deal through a large number of wholesalers.

Q. But you state that not over 10 per cent of the whole- [fol. 2369] salers, with whom you deal, engage in transit business.

A. Well, let's say 10 per cent of my production probably ends up in transit.

Q. Oh, I see, 10 per cent of your production?

A. Yes.

Q. In making sales to wholesalers, in view of this small percentage of your production that goes in transit, do you try to select wholesalers who deal primarily in firm business?

A. Yes.

Q. And I gather that you are in the same position with regard to your views of the transit operation—you're in somewhat the same position as some of these other gentlemen who don't like them?

A. I think so.

Q. What's that.

A. I think so.

Q. But the transit operator has been in the picture for a number of years, has he not?

A. Yes, he has.

Q. And in the past 10 years or so, the numbers of transit operators have greatly increased, have they not?

A. That's right.

Q. Now, after you have routed a car—let me ask you this question—strike that.

What you do is this: You sell a car to the wholesaler. [fol. 2370] It hasn't been routed out yet, has it?

A. Most of the times the wholesaler, when he sends the order, he has the privilege of putting his own routing on it.

Q. Yes. He orders a car of certain specifications and content?

A. That's right.

Q. And then he gives you the routing and you insert that ordinarily on the bill of lading?

A. Yes.

Q. So that the routing question is one that does not bother you particularly? It really is the responsibility on the part of your wholesaler?

A. That's right.

Q. So, when you talk about the sufficiency of routings, you really are speaking on behalf of your wholesalers, rather than yourself, aren't you, because you don't have any responsibility in regard to routing?

A. No, although I still have to be concerned, of course, as to where the markets are, what territory we can ship to.

Q. Yes, but I mean so far as the use of available routes or future available routes, that's something that is primarily the responsibility of your wholesalers, the bother of your wholesalers?

A. The bother of them, yes.

Q. Yes, and the responsibility lies there?

A. I guess that's right. Of course, I might have my [fol. 2371] own opinion as to how I feel about it, but I can say that actually the responsibility is on the wholesaler.

Q. So then, when you say you don't think the Milwaukee rates and routes, which are proposed here, would be of any particular benefit, you're really undertaking to speak for the wholesalers, aren't you, rather than for yourself?

A. Well, insofar as this though—I mean, after all, the responsibility may be with the wholesaler, but, actually, in the end, I am, of course, interested in where my lumber can be sent. I mean I'm quite interested in how I can ship, vitally interested.

Q. Yes. Well, you're vitally interested, first and No. 1, in selling the lumber, aren't you?

A. That's right.

Q. And if the wholesalers can dispose of it one way or the other, once they purchase your output from you, and I understand that these are on firm prices, firm sales to the wholesaler—

A. That's right.

Q. —then your anxiety about the situation naturally decreases, once you have made a sale, isn't that true?

A. Yes. From that angle, that's right.

Mr. Maguire: That's all I have. Thank you.

Exam. Dishman: Anything more?

Mr. Rockwood: No, nothing more.

Exam. Dishman: Witness excused.

(Witness excused.)

[fol. 2372] Mr. Rockwood: I'll call Mr. Ferrell.

S. B. Ferrell was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Would you give your name to the Reporter?

A. S. B. Ferrell.

Q. Where do you live?

A. Here in Portland. Do you want my address?

Q. No; that's not necessary. In what business are you engaged?

A. In the manufacturing business, lumber manufacturing.

Q. With what company?

A. Pope & Talbot.

Mr. Maguire: Could I ask if you would speak up just a little bit louder, please?

The Witness: Yes, sir.

Mr. Rockwood: Pope & Talbot.

Mr. Maguire: Pope & Talbot.

By Mr. Rockwood:

Q. What is your position with Pope & Talbot?

A. General Sales Manager.

Q. Where are the executive offices of Pope & Talbot?

A. San Francisco.

Q. And does it have offices also in Portland?

A. Yes.

Q. What are the plants of Pope & Talbot which come within the jurisdiction of the Portland office?

[fol. 2373] A. The mill at Port Gamble, Washington; St. Helens, Oregon; and Oakridge, Oregon.

Mr. Maguire: I didn't get the last one. Oakridge?

The Witness: Oakridge.

By Mr. Rockwood:

Q. Oakridge, Oregon, is served by what railroad?

A. Southern Pacific.

Q. And St. Helens, Oregon, by?

A. SP&S.

Q. SP&S, and how do you reach Port Gamble?

A. Car ferry if by rail.

Q. Where is Port Gamble located? Can you define it with respect to the state of Washington?

A. Well, the easiest way probably is to say about 30 miles north of Bremerton.

Q. North of Bremerton. That's on the Olympic Peninsula?

A. On tidewater.

Q. On the Olympic Peninsula?

A. That's right.

Q. And on the west side of Puget Sound?

A. Yes.

Q. And with rail service on the east side of the Sound through Seattle, Great Northern, Northern Pacific, or Milwaukee, how do you get your rail shipments out of Port Gamble into Seattle?

A. By car barge.

[fol. 2374] Q. With what railroads can you connect on car barge shipments from Port Gamble?

A. I believe the NP and GN and Milwaukee. I believe those three. There's three I'm sure of. I don't know but what there may be more.

Q. On what line of the SP&S is St. Helens located? Which of the lines of the SP&S?

A. Well, it's the—I presume it's the Astoria branch.

Q. The lower Columbia River?

A. That's right, the lower Columbia.

Q. North of Portland on the Astoria line?

A. That's right.

Q. What is the St. Helens plant? Is it a sawmill, or what is it?

A. Yes, it's a sawmill and—well, we have two operations at St. Helens, a sawmill and a treating plant.

Q. Is your company engaged in the manufacture and sale of your own products, or do you do some wholesaling?

A. No. We manufacture and sell our own products.

Q. Do you sell any of your cars as transit cars, or are they all sold as firm cars?

A. They're all firm sales.

Q. Is St. Helens available—can it be reached through ocean-going vessels?

A. Yes.

[fol. 2375] Q. At St. Helens, how is your output disposed of? By rail or water, or how?

A. Primarily by water.

Q. How much rail business comes out of St. Helens in a year's period?

A. Well, I would say from 6 to 8 million feet a year probably.

Q. How many carloads would that be?

A. Oh, somewhere around 230 maybe.

Q. Does that include the output of your treating plant?

A. No. The treating plant—well, last year wasn't too good a year. I think we shipped about two and a half million feet out of there last year, which would be in the neighborhood of probably 150 cars, I would guess.

Q. Out of Oakridge—

Mr. Maguire: Could I interrupt just a minute? I'm not objecting or anything, but I—

The Witness: Did I give you a bum figure?

Mr. Maguire: No. I just couldn't hear what you said. Was it 250 cars of treated products?

The Witness: No. I said about 150 of the treated.

Mr. Maguire: Oh, I see. Thank you very much. I guess I didn't hear that.

By Mr. Rockwood:

Q. How do your shipments move out of Oakridge?

A. By rail.

Q. How many cars do you ship from Oakridge per year?

[fol. 2376] A. I'd say about 2500.

Q. Out of your Port Gamble mill, you say that's on tidewater?

A. That's right.

Q. Is some of that business handled by water away from mill?

A. Yes, most of their shipments are by water.

Q. Can you give us any estimate of the number that move by car barge, thence by rail?

A. Well, actually, it's very small. I would say it probably would not ship more than 12 cars a month by rail.

Q. Do you have any particular or special product which you have occasion to market in the state of Montana?

A. Treated lumber, we do, from the treating plant at St. Helens.

Q. Do you have any particular customer in Montana to whom you sell a substantial volume of lumber, treated lumber?

A. Well, we have a representative back there, and I think most of the stuff that we sell goes to the—well, it's for bridges and culverts, and so forth, probably the State Highway Commission.

Q. Have you made sales of that product for bridges and culverts at points along the Great Northern and Northern Pacific?

A. Yes, sir.

Q. Have you made sales of those products to points local to the Milwaukee in southern Montana?

A. No, I don't believe we have.

Q. That territory that you speak of is, of course, west of Mobridge?

[fol. 2377] A. That's correct.

Q. And the rates, which are applicable out of Vernonia, are not applicable out of St. Helens?

A. That is true, they're not.

Q. Mr. Ehlen, Traffic Manager of the SP&S, has testified on the stand at this hearing that instructions are in the course of preparation by the SP&S to the North Pacific Coast Freight Bureau to put into effect rates from all points on the SP&S to all local points on the Milwaukee east of Spokane with no right of diversion beyond the Milwaukee.

If such rates were put in from all SP&S points, including St. Helens, to points west of Mobridge as far as Spokane on the Milwaukee, would that enable you to market this bridge and culvert material, treated material, all along the lines of the Milwaukee at local points?

A. I would hope so.

Q. And you would find that to your advantage?

A. Why, yes. At least it would remove the disadvantage that we have presently in that area.

Q. Do you know generally what the proposal here is of the Milwaukee in this case with respect to an additional route via—from SP&S points via Spokane, and the Milwaukee east of Spokane?

A. Yes, I have heard it discussed. I am not too familiar with it.

[fol. 2378] Q. Well, from what you do know of it, if this change is made with respect to rates to Milwaukee points west of Mobridge, then I ask you whether the addition of any route via the Milwaukee and Spokane, as here proposed, would be of assistance to your company in the marketing of your products?

Mr. Maguire: Just a moment, Mr. Ferrell, before you answer that, please.

Mr. Examiner, the witness has said he's not very familiar with the proposal of the Milwaukee. Mr. Rockwood has said, "Well, from what you do know of it, would it be of any help?" I think that in an orderly presentation of the facts in the case is that, first, Mr. Rockwood should

find out what he does know about it, and then get his opinion.

Mr. Rockwood: I'm perfectly willing to, but I think the question is perfectly all right.

By Mr. Rockwood:

Q. What is your understanding of the Milwaukee proposal, Mr. Ferrell?

A. Well, as I understand it, the Milwaukee is proposing to instigate action of some sort to get permission to run —or to pick up eastbound tonnage at Portland junction, is that right?

Q. No, that's not it. I won't press you.

A. All right.

Q. If you're not familiar with it, I won't go ahead with it.

A. All right.

Mr. Rockwood: You may cross examine.

[fol. 2379] Cross examination.

By Mr. Maguire:

Q. I may be a little bit confused, Mr. Ferrell, because I was trying to look at one thing and listen to you, with one eye and one ear.

Do I understand that Pope & Talbot make all of their sales direct? You do not work through any wholesalers?

A. We work entirely through wholesalers.

Q. Oh, I beg your pardon, and then I think maybe I did miss something here. Do you make firm sales to your wholesalers?

A. Yes, sir.

Q. Now, for example, on this treated lumber or timbers that you sell in Montana to the Great Northern and Northern Pacific, are those sold to those two companies through wholesalers or direct by Pope & Talbot?

A. No, I'll have to—I was thinking of lumber, and not of the treated angle, when I made that statement.

Q. Oh, I see. Your treated products you try to sell direct?

A. Our treating department—we have representatives in various areas in the state of Montana. They do have one man who sells for us in the state of Montana, and he contacts the Highway Departments, or whoever may be using treated material.

Q. I see. Well, now, on your lumber—I'm speaking about your St. Helens mill because that's the only one that is directly involved here—do you sell most or all of the 230 cars per year of lumber, coming out of St. Helens, to wholesalers?

[fol. 2380] A. That's right.

Q. And do you sell to them upon a firm basis?

A. Yes, sir.

Q. In dealing with wholesalers, do you make any distinction between whether you wish to deal with wholesalers who engage in firm sale business only, or those who also engage in so-called transit business? Do you make any distinction?

A. Yes, we do, and I think I can honestly say that we sell rarely to anyone who deals in transit cars. Our stuff never gets into transit, as far as I know.

Mr. Maguire: I think that's all I have, Mr. Ferrell.

Mr. Rockwood: That's all. Thank you.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Rockwood: I'll call Mr. Davis.

Richard E. Davis was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you state your name, please, to the Reporter, Mr. Davis?

A. Richard E. Davis.

Q. And where do you live?

A. I live in Lebanon, Oregon.

Q. And what is your business, Mr. Davis?

A. I'm General Sales Manager for the Santiam Lumber [fol. 2381] Company, who have two mills, one at Sweet Home, Oregon, and one at Lebanon, Oregon.

Q. By what railroad is the Sweet Home mill served?

A. The Oregon Electric.

Q. That is on the so-called Santiam Branch of the Oregon Electric?

A. That's correct.

Q. By what railroad or railroads is your Lebanon plant served?

A. It is served both by the Southern Pacific and Oregon Electric.

Q. That's also on the Santiam Branch of the Oregon Electric?

A. That's correct.

Q. But it's served by both railroads?

A. Yes.

Q. And how long have you been in the business of distribution and sales of forest products in the Northwest?

A. I've been with Santiam Lumber Company for eight years.

Q. Does your company engage in the business of manufacture only, or do you do some wholesaling?

A. No. It's strictly manufacture.

Q. What is the general nature of the product that you produce at the two mills at Sweet Home and Lebanon?

A. Well, we manufacture about 70 per cent fir, and 30 per cent hemlock, and it's regular dimension timbers and shed items.

Q. How many cars do you ship out of—by rail from your two mills?

[fol. 2382] A. Last year I believe we shipped fairly close to 3000 cars.

Q. Do you know how these shipments were split between the two mills, how many from Sweet Home, how many from Lebanon about?

A. Well, I don't recall exactly. I don't have the figures with me, but better than two-thirds of them were from the Sweet Home mill. In other words, it was better than 2000—2000 plus cars.

Q. How do you dispose of your lumber? Through what sales agencies or methods?

A. Well, practically a hundred per cent through wholesalers.

Q. Are those Pacific Coast wholesalers, or eastern wholesalers, or some of both?

A. Some of both; principally wholesalers that are located in the territories.

Q. That is, east of the producing territory on the Pacific Coast?

A. That's right.

Q. Who is responsible for the routing of the cars so sold to wholesalers? You or the wholesalers?

A. I am—my sales department.

Q. You control the routing?

A. We control the routing.

Q. Are the sales made by you to the wholesalers firm as between you and your wholesaler? Is it a firm sale, an outright sale from you to the wholesaler?

[fol. 2383] A. Yes.

Q. Do you know whether the wholesalers, with whom you deal, dispose of your lumber by firm sales or transit sales, or a combination?

A. Well, I'd say practically all are firm sales, but I'm sure there would be some transit, undoubtedly is, but most of it is firm sales.

Q. Did you prepare at my request a statement showing the distribution of carloads by states in the year 1954 out of your Lebanon and Sweet Home plants?

A. Yes, sir.

Mr. Rockwood: I ask that there be marked for identification as Exhibit No. 37 the statement referred to by the witness.

Exam. Dishman: It may be so marked.

(Defendant's Exhibit No. 37, Witness Davis, was marked for identification.)

By Mr. Rockwood:

Q. Is this statement, which has been marked Exhibit 37, the statement that you refer to showing distribution by states in 1954?

A. Yes.

Q. Do you have a customer at Cedar Rapids, Iowa, by the name of Continental Forest Products Company?

A. That's correct, yes.

Q. Are you able to ship to him off the Santiam Branch via the SP&S to Spokane, and thence via the Milwaukee to Cedar Rapids?

[fol. 2384] A. No.

Q. At the present time?

A. No.

Q. Has that customer ever made any request upon you to use your influence to get rates off the Santiam to Cedar Rapids as a local point?

A. Yes, several times.

Q. Before you is a map which was presented by Mr. Ehlen, Traffic Manager of the SP&S, and, in presenting that map, Mr. Ehlen stated that directions had been given to the Transcontinental Freight Bureau for the publication of rates from Santiam points to Milwaukee points shown on that map east of Mobridge on the basis presently available from Oregon Electric Main line points.

If that were done, when, as, and if that is done, will that solve a problem of your customer, Continental?

A. Yes.

Q. Still referring to that map, will you tell me the extent to which you market lumber at local points on the Milwaukee west of these colored in blue extending out to Spokane? How much in that territory from the blue line out to Spokane?

A. Well, I don't believe I could answer it by looking at these figures here. I haven't totaled them up. I do know that, including those states, plus all of Minnesota, Iowa, Wisconsin, Illinois, it would amount to about 26 per cent, but I don't—of course, we could add these up and it would show.

[fol. 2385] Q. Well, where is your principal market in Minnesota, for instance?

A. Well, I couldn't answer that question. I don't have the—

Q. I see. You don't have it broken down that way?

A. No.

Q. Your total sales, I notice, in South Dakota in the year 1954 were 51 cars out of 2842, and your sales in Montana in that same year were 5 cars out of 2842. Except

as you have this information as shown by states, you would not be able now to break it down further to determine what railroads were used on those South Dakota shipments, or on those Montana shipments, is that correct?

A. Well, that's correct. They're principally, of course, the GN and NP lines because, if we go to the Milwaukee on any of those points, of course, we have to pay an 8 cents penalty over the—8 cents, plus the through rate, and, therefore, of course, we aren't competitive.

However, we have in certain cases made arrangements either to absorb the extra freight or to split it with the wholesaler involved.

Q. So, if these rates were published that I mentioned, it would eliminate this extra charge, would it?

A. Yes.

Q. Out of your Sweet Home mill, what rail routes do you customarily use?

[fol. 2386] A. We use the OE, SP&S, and the GN and the NP to the Minnesota Transfer, through that gateway, and the Laurel transfer, and also south through the Bieber gateway through the OE, GN, WP. Those are the only through routes that are open to us.

Q. Confining it to Sweet Home now, how do you handle your California shipments out of Sweet Home? Do you make California shipments out of Sweet Home?

A. Oh, yes.

Q. What route do you use for that?

A. Well, the only route we have, of course, is the OE, GN, WP on a through rate.

Q. Yes.

A. Unless we ship on the SP, and we'd have to again pay a penalty.

Q. You pay a penalty. Now, out of your Lebanon plant, where you have the Southern Pacific available and the Oregon Electric, so far as your use of the Oregon Electric is concerned, do you use the same routes that you just described out of Sweet Home?

A. That's correct.

Q. And in addition, do you use the Southern Pacific, Union Pacific route at all?

A. Yes, SP, UP, D&RGW.

Q. On California business, do you use SP direct in some cases?

A. Yes.

Q. Have you seen a copy of that map that is now before [fol. 2387] you, Mr. Ehlen's Exhibit 28, before today?

A. Yes.

Q. The rate situation portrayed by that map was explained to you by whom?

A. By Mr. Ehlen.

Q. When he showed it to you before?

A. That's right.

Q. From that explanation and from your examination, are you generally familiar with the present setup of rates on lumber from SP&S points to points on the Milwaukee east of Spokane?

A. Yes. You mean the OE and then the SP&S?

Q. Yes.

A. Yes.

Q. Are you—do you know about what the Milwaukee is asking in this case with respect to an additional route?

A. Yes.

Q. Will you tell us what your understanding is of what the Milwaukee is asking for?

A. The Milwaukee is asking—my understanding is they're asking for through rates on lumber originating on the Oregon Electric or SP&S to transcontinental points beyond Chicago.

Q. Joint with the SP&S and the Milwaukee?

A. Yes.

Q. To all territory east of Chicago?

A. That's right.

[fol. 2388] Q. Does your company start out cars from your mills partly loaded to stop to complete loading at some other point?

A. We do some of that, yes.

Q. In what areas do you stop to complete loading?

A. Well, mostly it's in western Washington in connection with stopover to pick up cedar, which would be up around the Seattle area, and then also over in eastern Washington to pick up pine.

Q. You pick up pine east of Spokane at all?

A. I'd say no, but I'd qualify it. There might be a case, but I don't think we do.

Q. Then so far as you are aware, have you ever had any difficulty in finding a source for pine loading to complete loading with pine?

A. No, but I should explain that most of the time we don't handle the other part of the car. In other words, it's handled by the wholesaler, but, to my knowledge, we haven't had any trouble.

Q. Yes. Do you know whether or not cars part loaded with fir at your mills and completely loaded with pine east of the mountains are ever handled as transit cars, or are they all firm orders?

A. No. They're all firm orders.

Q. Are your cars shipped billed to part unload at one station and to complete unloading at another destination?

A. Yes, we do some of that. Most of that, however, is east of Chicago; very little in the midwest of that type of business is done.

[fol. 2389] Q. What has been the experience of your company with respect to rejection of a car by the purchaser at destination which involved the necessity of moving that car on to another destination? Have you ever run into that?

A. We had just one case last year, and, actually, while we did move the car, it was a case where it could have been settled there, but it was my wish to move that car. That was one case last year, and I don't remember of another case.

Q. In what general area did that occur?

A. That occurred in Illinois outside of—I believe it was just north of St. Louis.

Q. If the rate situation from the Santiam is changed in the respect that I indicated a few moments ago, would the addition of the Milwaukee route, which they now request, be of any assistance to your company in the marketing of your products?

A. No, I don't think so.

Q. With that change, are the routes out of Sweet Home and Lebanon adequate to handle all your business?

A. Yes.

Q. At your Sweet Home mill, I suppose the cars are supplied by the Oregon Electric?

A. That's correct.

Q. And at the Lebanon mill, you have the two sources, the Oregon Electric and the Southern Pacific?

[fol. 2390] A. That's correct.

Q. Do you handle the ordering of cars, or are you familiar with the car supply situation?

A. Yes. Of course, I don't directly handle the ordering of the cars, but I am familiar with it at all times.

Q. With the car supply situation?

A. Yes.

Q. What has been the experience of your mills at Lebanon and Sweet Home with respect to the supply of cars ordered from the Oregon Electric in the past years?

A. Well, in the last couple years, we haven't had any trouble.

Q. Did you have trouble before then on the OE cars?

A. Oh, I believe about three years ago there was trouble, but it was general; actually, there at Lebanon between the OE and Southern Pacific, we were in much better shape on the Oregon Electric. In fact, we had cars ordered on the SP that we reordered on the Oregon Electric and were able to get those cars.

Q. And on the outbound movement, where the Oregon Electric furnished the car after that failure, did the Oregon Electric get the outbound business?

A. No.

Q. But you got cars?

A. We divided it up again.

Q. But the Oregon Electric got the cars for you?

A. Yes.

[fol. 2391] OFFER IN EVIDENCE

Mr. Rockwood: You may cross examine. I offer Exhibit 37 in evidence.

Mr. Maguire: No objection.

Exam. Dishman: Received.

(Defendant's Exhibit No. 37, Witness Davis, was received in evidence.)

Cross examination.

By Mr. Maguire:

Q. Mr. Davis, are you any relation to Mr. L. S. Davis of the Northern Pacific?

A. No, sir.

Q. I just wanted that to appear in the record.

Will you look at your Exhibit No. 37? I find some rather puzzling percentage figures there. I notice that Alabama you show five carloads, which is .18 per cent of the total. Do you follow me there?

A. Yes.

Q. And then Montana five cars, which .13 per cent of the total. Do you see that?

A. Yes.

Q. Then New Mexico five cars, which is .17 per cent of the total?

A. Yes.

Q. North Carolina five cars, which is .19 per cent of the total?

A. Yes.

Q. Wyoming five cars, which is .20 per cent of the total?

A. Yes.

[fol. 2392] Q. Now, those percentages were all figured upon your total of 2842 cars, weren't they?

A. That's right.

Q. How do you account for the difference in the percentages?

A. When you figure it out on a small percentage on 2800 cars, you have quite a—I mean, the girls that are computing this, you can understand how an error like that can be made.

Q. You must have had different girls computing each state because they come out with a different percentage each time?

A. Well, chances are they didn't look up above.

Q. And then if you'll look at Florida, you have 33 cars which shows 1.12 per cent. Louisiana 33 cars, you have 1.27 per cent. The same explanation of that?

A. That's correct.

Q. And did you have different girls preparing different parts of this exhibit?

A. I couldn't answer that. I have the original here if anybody wants to take a look at it, that it was made off of.

Q. You copied this off the original?

A. Yes.

Q. And does that show the same discrepancy in percentages?

A. Yes. I think probably this percentage was figured on footage, rather than cars. The footage isn't shown on this, on the exhibit, No. 37. See, we show the footage, and, actually, that's what your percentage is taken from, and then it's just run off.

[fol. 2393] Q. Oh, I see. Then your first explanation I think we'd better disregard, that the girl didn't do it right. Counsel called your attention to this?

A. That's right.

Q. Now, do you know whether that's right?

A. No, I haven't checked it myself.

Q. Do you know if you use the footages you're going to come out any better than that?

A. No. As I say, I haven't checked it personally.

Q. That was merely an out that was suggested by Counsel then, wasn't it?

Mr. Rockwood: A what?

Mr. Maguire: An out.

Mr. Rockwood: That's what you characterize it.

The Witness: I think he—

Mr. Maguire: Well, I—

Mr. Rockwood: You think what, Mr. Davis? Go ahead and answer.

Mr. Maguire: I think he's a nice fellow too.

By Mr. Maguire:

Q. Now, I notice here the description of your routings, your system of routings, your description of it to Mr. Rockwood, on your shipments where the SP gets the haul, are those to SP points in California, or other states, which are non-competitive with the Great Northern, for example?

A. Most of the time, yes.

Q. And in other respects, your routing seems to be [fol. 2394] pretty much confined so far as you can give the long haul to the Great Northern or Northern Pacific, and, of course, the Oregon Electric and SP&S, isn't that the general pattern of it?

A. That's correct.

Q. Does the firm which you represent obtain any logs which have been logged on the so-called Hill tract?

A. That's correct.

Q. And do you know whether or not there is any condition or understanding on the purchase of those logs that they will be routed outbound giving the northern lines the preference?

A. There is no understanding. We have control of our own routing.

Q. So that is coincidental?

A. Yes.

Q. And that so-called Hill timber is administered by the Timber Service Company for the Louis W. Hill and Claude Hill family foundation, is it not?

A. As far as I know, yes.

Q. And Louis W. Hill was at least a Director—I don't know if he was an officer—at one time of the Great Northern, wasn't he?

A. That's what I understand.

Q. The son of James J. Hill?

A. That's what I understand.

Q. Now, I'd like to ask a few questions about the [fol. 2395] Continental Forest Products Company at Cedar Rapids, your customer. What disposition do they make of cars that come off the Santiam Branch or any other of your origin points consigned to them? Are those cars consigned to the Continental Forest Products, or to their customers?

A. Most of the time, Continental Forest Products.

Q. At Des Moines—I mean—at Cedar Rapids?

A. No; wherever—at the destination—that is, wherever that car is sold.

Q. Now, you will notice here that—where is their territory of operation?

A. They operate in Iowa, all of Iowa, including a part of

Illinois, in the southern part of Wisconsin, Minnesota, and part of South Dakota.

Q. Do you know whether they make any sales here on the line running from Sioux City down to the junction with the Omaha line of the Milwaukee? That's these blue stations here over on the western side of Iowa. They're pretty hard to make out on that. Manilla and west?

A. That would be here, wouldn't it?

Q. Here it is, right here, Sioux City.

A. Oh.

Q. Yes, in Iowa. From Sioux City down to Manilla on that map.

A. I don't recall the names of those towns on the orders, but it could be.

[fol. 2396] Q. And where in Illinois—was that northern Illinois?

A. Yes.

Q. Where in northern Illinois does the Continental do business?

A. North of Springfield.

Q. Do you know whether—will you look along—this is the Milwaukee here, the heavy line across Illinois I'm pointing to, here's Davenport, Rock Island, Savanna, and across to Chicago. Do you know whether they make any sales along that line of the Milwaukee?

A. Yes, they have.

Q. Do they make any sales south of the Milwaukee Railroad in northern Illinois?

A. Well, I'm sure down into Springfield, yes.

Q. And when they told you about their plight and asked you to use your influence to get these rates off the Santiam Branch. what did you do?

A. Well, we talked to Mr. Ehlen about it.

Q. How long ago was that?

A. Oh, it's been some time ago.

Q. How long ago would you say? Is it over a year ago?

A. Yes, it's been over a year ago.

Q. I don't like to push you from one place to another, but, if you can tell me—if you can't tell me, why, just tell me you can't tell me. Was it as long ago as two years ago?

A. I'll say this: Of course, we have as long as I can

[fol. 2397] remember, say, starting six years ago, I can remember we've talked about it with Continental on occasions, and we've also, of course, brought it to the attention of the SP&S.

Q. And did the SP&S make any move until this current one that you were just told about today?

A. Not that I know of.

Q. Well, now, you say that, if these rates are made available off the Santiam Branch, that that will solve the problem of the Continental. Now, I think you stated that Mr. Ehlen was good enough to explain this map of his to you.

Now, that yellow area, all those stations marked in yellow, according to the map, illustrates destinations on the Milwaukee which under present through routes and through rates can be served from the Santiam Branch, on the one hand, through Minnesota Transfer, down into Iowa.

No, then, what would the Continental get in that case since that yellow area covers all of Iowa except that little line that I mentioned from Sioux City down to Manilla—not Manilla—yes, Manilla? What more would they be getting by these rates that Mr. Ehlen has put in motion here, or the Great Northern and Northern Pacific have, that they don't already have?

A. Well, of course, they're not our sole account in that area.

Q. I'm talking about—

A. You're talking about Continental.

Q. I'm talking about the position of the Continental in [fol. 2398] agitating this change.

A. Well, I couldn't answer that. You'd have to ask them.

Q. Well, from the map, it's quite evident that they would not be getting anything that they have now?

Mr. Rockwood: Just a minute. I object to that as argumentative. There may be lots of things that it would mean to Continental, for instance, friendship for the Milwaukee, for one thing, that we don't know about.

Exam. Dishman: What does the witness know about it of his own knowledge? What do you know about it?

Mr. Rockwood: He says he doesn't know.

Mr. Maguire: He said the map has been explained to him, that he understands the map, and I'm pointing out that

under this map the Continental would not get anything in addition to what it already has.

Mr. Rockwood: Mr. Examiner, I object to that question. Mr. Maguire is asking for the state of mind of Continental, or for his conclusions of the state of mind of Continental.

Mr. Maguire: I'm asking him about—

Mr. Rockwood: Please, be quiet.

Mr. Maguire: No, I will not be quiet.

Mr. Rockwood: May I make my objection?

Mr. Maguire: I will now.

Mr. Rockwood: Mr. Maguire is asking this witness to draw a conclusion from an examination of a piece of paper [fol. 2399] here in Portland as to the state of mind of the Continental Company back in Cedar Rapids, Iowa, and I object to the question.

Mr. Maguire: I'm not asking about the state of mind of the Continental. I'm asking about the results of these rates, and this witness has already testified about it on direct.

Exam. Dishman: Well, the witness, if he has knowledge of the situation from studying the map, he may answer.

The Witness: Will you repeat the question?

Mr. Maguire: I think this is all apparent. So, I won't follow that with you any further.

Mr. Rockwood: Mr. Davis, I have just this one question I want to—

Mr. Maguire: Just a minute. I'm not through yet.

Mr. Rockwood: Oh, excuse me. I'm sorry.

By Mr. Maguire:

Q. Now, do you use any care yourself—that is, your company—in selecting the wholesalers with whom you deal as to whether they do business on a firm basis as you described it?

A. We do.

Q. And do you make it a policy to deal with the so-called transit dealers, or do you prefer to deal—make a policy to deal with the wholesalers who sell on a firm basis?

A. I'll put it this way: We try to deal with the wholesaler that is in the territory. We feel that they—the sale of our products goes there, and, of course, most of the transit [fol. 2400] operators are out here on the coast, I believe.

Q. Well, then, the answer is that you prefer to deal with wholesalers who in turn deal with their customers on a firm basis?

A. That's correct.

Mr. Maguire: He's all yours, Mr. Rockwood.

Redirect examination.

By Mr. Rockwood:

Q. Do you know of your own knowledge whether Continental has any interest or activities in any of these towns colored in blue on the map, which is before you? Do you know?

A. I don't quite follow you.

Q. I take it that Continental operates lumber yards, does it?

A. No. They're wholesalers. They have salesmen out on the road.

Q. Do you know whether they have any interest in sales made at any of these points colored in blue on the Milwaukee?

A. Well, they have a man traveling in western South Dakota and also the southern part of Minnesota, south of Minneapolis. They don't get into Nebraska, and they cover all of Iowa.

Q. This Exhibit No. 37, the discrepancy—the apparent discrepancy called to your attention in the percentages as related to the number of cars, from what information given on the sheet—what information was given to me in addition to the number of cars shipped to these various states?

A. There was footage indicated.

[fol. 2401] Q. On the last column that's headed "Percentage of total"?

A. "Percentage of total".

Q. Are those percentage figures related to the footage shown on the work sheet handed to me, but not shown in Exhibit 37, or are they related to the cars shown on Exhibit 37?

A. I would say that they're related to the footage, rather than the cars.

Mr. Rockwood: Has Exhibit 37 been received?
Exam. Dishman: Yes.
Mr. Rockwood: That's all, Mr. Davis.
Mr. Maguire: Just a minute, Mr. Davis.

Recross examination.

By Mr. Maguire:

Q. Are you certain that those percentages are based upon the footage now?
A. I'm—I'll say I'm fairly certain.

Mr. Maguire: All right, we won't worry about it. Thank you very much.
Exam. Dishman: Witness excused.

(Witness excused.)

Exam. Dishman: We'll take a short recess.

(Short recess taken.)

Exam. Dishman: The hearing will be resumed, gentlemen.
Mr. Rockwood: I'll call Mr. Hegewald.

R. M. Hegewald was sworn and testified as follows:

[fol. 2402] Direct examination.

By Mr. Rockwood:

Q. What is your name, please?
A. R. M. Hegewald.
Q. Where do you live?
A. Stevenson.
Q. Stevenson, Washington?
A. Stevenson, Washington.
Q. What business are you engaged in?
A. Lumber business.
Q. What is the name of the company with which you are associated?
A. Hegewald Timber Company.
Q. And what is your position with that company?

A. I'm the President of the company.

Exam. Dishman: I didn't understand.

The Witness: I'm President of the company.

By Mr. Rockwood:

Q. Where is the mill of your company located?

A. At Stevenson, Washington.

Q. And by what railroad are you served?

A. SP&S.

Q. Stevenson is on the main line of the SP&S?

A. Yes.

Q. On the way to Spokane, a short way east of Vancouver?

A. Yes.

Q. How long have you been in the lumber business in the Pacific Northwest?

[fol. 2403] A. Oh, 15 years off and on.

Q. Does your company do any business other than disposing of the product of your own mill that you manufacture?

A. No.

Q. The products you manufacture in your own mill?

A. Yes.

Q. How do you dispose of the products of your mill? Is it direct sales, or through wholesalers, or what?

A. Well, we dispose of—all wholesalers. It's wholesalers.

Q. Are those west coast wholesalers, or wholesalers throughout the eastern part of the United States?

A. Yes.

Q. Well, which are they? West coast?

A. West coast wholesalers.

Q. Do you have any difficulty whatsoever in disposing of all the lumber which you have available for sale?

A. No, we don't.

Q. Do you sell all to one wholesaler, or to several?

A. No; we sell to several wholesalers.

Q. Is there any competition among wholesalers to buy from you?

A. Yes.

Q. Do you have requests from wholesalers in excess of your capacity to supply them?

A. Yes.

Q. When cars are billed out of your mill at Stevenson, [fol. 2404] who is named as the consignor? You or the wholesaler?

A. The wholesaler.

Q. Who designates the routings on those cars?

A. On the firm orders, we take the wholesaler's routing. On the transit shipments, we reserve the privilege to route it to the diversion point.

Mr. Maguire: I couldn't get that last answer. Could I have that repeated by the Reporter?

The Witness: The firm orders we ship, the routing is set by the wholesaler. On the transit shipments, we prefer—we have the privilege to route the car to the diversion point.

Mr. Maguire: Oh, I see.

By Mr. Rockwood:

Q. What is the diversion point most commonly used on your lumber which is sold as transit cars?

A. Minnesota Transfer and Laurel.

Q. And to what extent—what choices do you have in selecting routes to the diversion point?

A. We have a number of choices, the Great Northern, the NP.

Q. It's up to you to select between the Great Northern and Northern Pacific?

A. Yes, to the diversion points.

Q. About how many cars a year are produced at your mill?

A. We ship from 75 to 80 cars a month.

Q. Which would be per year in the neighborhood of a thousand or 1100?

[fol. 2405] A. Yes.

Q. What product do you sell out of your mill?

A. Primarily dimension lumber.

Q. Green lumber?

A. Green.

Q. Or dry?

A. Green.

Q. In what area of the United States does your lumber go?

A. Well, it's primarily in the middle west.

Q. Is there any sold east of Chicago?

A. Some, yes.

Q. Do you know approximately what percentage is sold east of Chicago?

A. I don't know offhand without looking at the records.

Q. When you say the middle west, generally what states do you include?

A. Well, I'd say Iowa, Nebraska, Indiana, Illinois.

Q. Minnesota?

A. Minnesota.

Q. Missouri?

A. Yes.

Q. Do you sell any in Colorado?

A. We sell in Colorado, yes.

Q. Do you sell any in the Dakotas?

A. Some; not very much.

[fol. 2406] Q. On that map before you on the table, there are some stations on the Milwaukee colored in blue extending west from a line generally close to the Iowa-South Dakota line with some few points in southwestern Minnesota and some in North Dakota.

Do you sell any into that territory that is shown in blue on that map and west thereof?

A. There's been some. I can't recall the amount.

Q. Is that a substantial part of your business?

A. In Nebraska—in the southeastern part of Nebraska, yes.

Q. In the southeastern part of Nebraska?

A. Yes.

Q. But is that territory colored blue in South Dakota a place where you market any substantial part of your lumber?

A. Not very much.

Q. How is the lumber routed when it moves out of your mill on the SP&S? You say the transit cars go to Laurel or Minnesota Transfer?

Mr. Maguire: No. He said to Minnesota Transfer.

Mr. Rockwood: And he said Laurel also.

The Witness: And Laurel also.
Mr. Maguire: He hasn't said that yet.
The Witness: Oh, yes, I have.
Mr. Rockwood: Oh, yes, he has.
Mr. Maguire: I beg your pardon.

By Mr. Rockwood:

Q. What routes do you use to get to Minnesota Transfer? [fol. 2407] A. Great Northern or Northern Pacific and Minnesota Transfer.

Q. Do you ever move out of your mill at Stevenson to Spokane over the SP&S and thence Milwaukee?

A. No. I don't think we have.

Q. Do you have any occasion or opportunity to use the Union Pacific?

A. Yes, we do.

Q. How do you get to the Union Pacific?

A. We have to transport the lumber on the highway for about a mile and a half or two miles.

Q. Do you have a spur of the SP&S into your mill?

A. Yes, there's a siding we use there.

Q. How do you—what kind of rigs do you use to transport material to points on the Union Pacific across the river?

A. Lumber carriers, the same as we use on the SP&S.

Q. The same as you use for cars loading on the SP&S?

A. Yes.

Q. On lumber carriers, and on some occasions you go a mile and a half or two miles on the highway to Union Pacific points?

A. That's right.

Q. What is the station on the Union Pacific at which you can load?

A. Cascade Locks.

Q. Do you on occasions move cars across the river to [fol. 2408] Cascade Locks? Have you on occasions?

A. We have loaded a car—cars over there.

Q. Do you engage in the practice at all of loading a car partially and moving it to another point to complete loading before it's billed out?

A. No. We don't like to bother with that.

Q. Do your cars—do any of your cars that go out, are any of them billed to one destination for partial unloading, for complete unloading at another point?

A. It has, but very seldom.

Q. Do you know what part of the United States that happens?

A. That's in—I think it's in Illinois is where that is.

Q. In any event, east of the Minnesota Transfer?

A. Yes.

Q. What has been the experience of your company in the matter of rejection of cars at the billed destination involving the necessity of moving the car to another destination? Do you ever run into that?

A. We haven't had any of that difficulty in the movement of our cars.

Q. So far as you know, are the routes presently available to your mill at Stevenson adequate to enable you to dispose of your lumber output?

A. Oh, yes.

Q. You spoke of—scratch that, please.

[fol. 2409] For movement out of Stevenson on the SP&S, you order cars from the SP&S, I take it?

A. Yes.

Q. What has been your experience in the past with respect to your ability to get cars from the SP&S for loading of lumber at Stevenson?

A. We haven't had any difficulty, except when there was a car shortage we had trouble getting cars, but that was three years ago—three or four years ago.

Q. Do you know what the general car supply situation was in the Northwest at that time?

A. The general shortage was all over that way.

Q. You spoke of moving cars across to the Union Pacific. Did that have anything to do with the car supply, or was that just because you wanted to get to a Union Pacific point, or what?

A. Well, I think it had more to do with the car supply.

Q. And there was an occasion when you would move over to the Union Pacific to get a car?

A. Yes.

Q. How frequently would that occur?

A. Not very frequently; just during the car shortage when we couldn't get a car that we could use.

Q. Since that period of general car shortage—how long ago was that?

A. About three years, I believe.

[fol. 2410] Q. Since then, you've had no trouble getting cars from the SP&S?

A. No.

Mr. Rockwood: You may cross examine.

Cross examination.

By Mr. Maguire:

Q. This time that you trucked over to the Union Pacific, it just happened that the Union Pacific had cars and the SP&S hadn't?

A. Yes.

Q. Now, I want to ask you about your cars which are billed out as transit cars. As I understand it, the purchaser—the wholesaler tells you the junction point to which he wants it billed, is that it?

A. Yes.

Q. And usually from a mill in your location, the billed destination on a transit car, the first billed destination is Minnesota Transfer?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And so you have a choice there between the Northern Pacific and the Great Northern?

A. Yes.

Q. As a matter of fact, those are the only choices you've got to Minnesota Transfer at the present time?

A. Yes. That's sufficient.

[fol. 2411] Q. I said: They are the only ones you've got at the present time?

A. Yes.

Q. And if you were to—you do know—I think it's fair to say that you studied the map—you do know that there

are rates from Stevenson via SP&S to Spokane, thence Milwaukee to certain territory there, but it would not be practical under the present rate setup to bill a transit car via the Milwaukee from Spokane?

Mr. Rockwood: He didn't so state. Is that a question?

Mr. Maguire: I'm taking care of this examination if you will stop interrupting. If you want to object, object.

Mr. Rockwood: I'm about to.

Mr. Maguire: Do it.

Mr. Rockwood: All right. Mr. Examiner, he made a statement of facts of what the witness had testified. Then he misstated what the witness had testified. If Mr. Maguire wants to frame that as a question, I wouldn't object to it, but, as a statement, it's—

Mr. Maguire: I'm not making it as a statement.

Mr. Rockwood: Wait a minute. But as a paraphrase of what the witness said, so paraphrased by him, I take exception to it as an erroneous statement of what the witness said.

Mr. Maguire: I'm not referring to what the witness said at all in this question.

Mr. Rockwood: May we have the question read to see just where we're at.

[fol. 2411a] (Question read.)

Mr. Maguire: There's no reference in that question to the witness' testimony. This is just a device to break the continuity of cross examination.

The Witness: What was the question again?

(Question re-read.)

The Witness: We'd have to find a—

By Mr. Maguire:

Q. Now, would you answer the question? You couldn't do it, could you?

A. No. We aren't interested in it.

Q. You couldn't do it? That's the question, not whether you're interested in it or not, but, under the rate setup, you can't do it because you're bottled up in Milwaukee

local territory if you send a transit car that way, aren't you?

A. Well, I—

Q. Just a moment. I want you to answer the question. Don't argue with me.

Exam. Dishman: Can you answer the question? Can you do it?

The Witness: No.

By Mr. Maguire:

Q. Is it possible to do it?

A. No.

Q. Are your sales to wholesalers firm sales?

A. About 30 per cent—between 30 and 40 per cent.

Q. No. What I mean is this: Between you and the wholesaler, it's a firm sale?

[fol. 2412] A. That's right. That's not to the transit wholesaler, no.

Q. Doesn't the transit wholesaler contract to pay you a certain amount when he buys a car from you?

A. He just pays me a flat fee for selling the car of lumber. He's not—he sells the lumber for us on a flat fee.

Q. Oh, I see. He sells on a flat commission basis then?

A. Yes.

Q. I get you. I don't recall whether you told us the proportion of your output that is transit and the proportion that is sold on firm orders. Did you give that to us?

A. I said approximately 30 to 35 per cent is on firm orders to wholesalers, and the balance is on transit setup.

Q. Oh, I see, and those wholesalers in turn, are they selling on firm orders?

A. No. They're mostly to yards, their own yards. We only have three wholesalers we sell to that have their own yards, that we ship to.

Q. Oh, I see. Well, then, I think I can get that picture straightened out. You sell to certain wholesalers in the east?

A. That's right.

Q. Who have their own yards?

A. That's right.

Q. And you sell to them on a firm basis?
A. Yes.
[fol. 2413] Q. And then the remainder of your output is handled for you by transit operators?
A. Yes.
Q. On a flat commission basis?
A. Yes.

Mr. Maguire: That's all from me. Thank you, Mr. Hegewald.
Mr. Rockwood: That's all. Thank you.
Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Torinus: Call Mr. Kennedy.
Mr. Rockwood: Mr. Examiner, before Mr. Kennedy takes the stand, I would like to distribute the exhibits which—copies of the exhibits offered by Mr. Quirin this morning.
Exam. Dishman: That's Exhibit 36.

JOHN W. KENNEDY was sworn and testified as follows:

Direct examination.

By Mr. Torinus:

Q. Your name is John W. Kennedy?
A. Right.
Q. What is your residence, Mr. Kennedy?
A. Seattle.
Q. With what firm are you connected?
A. J. G. Kennedy Lumber Company.
Q. Is that a corporation or a partnership?
A. Partnership.
[fol. 2414] Q. And you're one of the partners, are you?
A. Yes, sir.
Q. Now, Mr. Kennedy, does your firm, the J. G. Kennedy Lumber Company, sell lumber to the Great Northern Railroad, Milwaukee Railroad, and many other railroads that are parties to this proceeding?

A. Yes, sir.

Q. To what railroads do you sell lumber?

A. The ones that would be a party here would be the Milwaukee, NP, GN, and I think that's all.

Q. Have you been subpenaed to testify here today, Mr. Kennedy?

A. Yes, sir.

Q. And you're appearing in response to that subpena, is that correct?

A. Yes, sir.

Q. What is the extent of your experience in the sales and distribution of forest products in the Pacific Northwest?

A. My personal experience has been about 8 years. The company has been in operation about 30 years.

Q. Has all of your personal experience been in the Seattle office?

A. Yes.

Q. Does your company engage in the manufacture of lumber products or sell lumber products manufactured by others, or both?

A. We're strictly wholesale. We sell products manufactured by others.

[fol. 2415] Q. Do you have your own sales organization, Mr. Kennedy?

A. No.

Q. Can you tell us briefly what your sales setup is?

A. We sell primarily through commission lumber salesmen and eastern wholesalers.

Q. Where are your commission lumber salesmen located?

A. It would be Denver and east.

Q. And your eastern wholesalers?

A. It would probably be Chicago and east.

Q. Do you sell any lumber in west coast territory?

A. Yes. We handle that directly from our Seattle office.

Q. That is, you and the other members of the partnership handle it direct, is that correct?

A. Yes.

Q. Does your company in the wholesale business make use of—does it make firm sales, or is it transit cars, or a combination of both?

A. We make a combination of both.

Q. What are the approximate percentages of your firm cars and of your transit cars?

A. Our transit cars would be a very small percentage, probably less than 5 per cent. That would be an estimate, but it would be a very small percentage.

Q. What is the approximate number of cars shipped by [fol. 2416] your firm annually?

A. Approximately 2400.

Q. Can you tell us what proportion of those cars are shipped from points on the SP&S and its subsidiary lines, the Oregon Electric and the Oregon Trunk?

A. Somewhere between probably 5 and 10 per cent a month.

Mr. Maguire: I didn't get that. 5 and 10 per cent?

The Witness: 5 and 10 per cent a month. It would be about 10 or 15 cars a month.

Mr. Maguire: I wonder if I could go off the record just a moment?

Exam. Dishman: Yes.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Torinus:

Q. Mr. Kennedy, I'm not sure it's entirely clear the approximate number of cars you originate on the SP&S and its subsidiary lines. Is that about—

A. I'll make it 10 per cent, about 20 cars a month.

Q. About 20 cars a month?

A. Yes.

Q. Now, speaking of your entire business in the Pacific Northwest, can you tell us generally in what areas you purchase lumber?

A. Our heaviest purchases probably would be in eastern Oregon, British Columbia, and the state of Washington— [fol. 2417] excuse me, I'm sorry—could I change that?

Q. Yes, sir.

A. That would be Washington and east through Montana.

Q. Your heaviest purchases then would be in Washington

and east through Montana, eastern Oregon, and British Columbia, is that correct?

A. Correct.

Q. What is the general description of the product which you sell? What kinds of lumber, what species do you deal in?

A. We deal in all species with the exception of redwood, and in all products, lumber products, with the exception of millwork and doors, which we call millwork.

Q. Can you tell us at what stations on the SP&S and its subsidiary lines you make purchases?

A. Bingen White Salmon—I guess that's all one, Klickitat, Eugene, Foster, Sweet Home, Lebanon, and other ones which I cannot think of offhand.

Q. Those stations represent the major portion of your purchases on the SP&S System lines?

A. Yes.

Q. What is your marketing territory?

A. Primarily, the midwest is our biggest area.

Q. Do you sell throughout the United States?

A. Yes, we sell in all 48 states, and our biggest territory would be in the midwest.

[fol. 2418] Q. Would you say roughly what percentage of your sales are east of the Mississippi River?

A. I would say that a good—east of the Mississippi, that would be probably 50 per cent.

Q. Can you tell us just generally approximately what proportion of your sales would be in that tier of states, Minnesota, Iowa, Missouri, and that area?

A. Probably, breaking it down that way, it would probably be about 30 per cent.

Q. Now, do you sell any substantial amount of lumber in the territory between the state of Iowa and Spokane, Washington, that is, in the states of South Dakota, North Dakota, Montana, and Idaho?

A. A very small quantity.

Q. A very small quantity?

A. Yes.

Q. You have before you a map, which is a copy of Mr. Ehlen's Exhibit 28. Has that map been explained to you, Mr. Kennedy?

A. Yes.

Q. Are you familiar generally with what routes and rates the Milwaukee is seeking in this case?

A. I have a general understanding of what they're asking.

Q. Will you state what that general understanding is?

A. I understand they want the territory in the blue and green off of all the SP&S, including the Santiam Branch, [fol. 2419] including transcontinental business off the Santiam Branch, thence SP&S via Spokane.

Mr. Maguire: Just for clarification. When you say "transcontinental", will you describe that?

The Witness: Chicago and east.

Mr. Maguire: I see. Thank you.

The Witness: May I also add since you brought that up: Also the yellow via Spokane.

By Mr. Torinus:

Q. Now, were you in the room, Mr. Kennedy, when Mr. Ehlen testified with respect to the proposal of the SP&S to make the rates from the Santiam Branch to the territory east of Mobridge applicable via Spokane to all local destinations on the Milwaukee east of Mobridge?

A. No, I was not.

Q. You were not here when he testified with respect to the proposal concerning rates from the SP&S—from SP&S points to local Milwaukee territory west of Mobridge?

A. No, I was not.

Q. If there were presently available from points on the Santiam Branch to points on the Milwaukee east of Mobridge on the same basis as applies from Oregon Electric main line points, such as Salem, and it's a full line of rates that's established to Milwaukee local points between Spokane and Mobridge, would you see any need for any additional rates from points on the SP&S to local destinations on the Milwaukee?

[fol. 2420] A. No, sir.

Mr. Maguire: Just a moment. Could I have that question read?

(Question read.)

Exam. Dishman: Your answer was "No"?

The Witness: No.

Mr. Torinus: Actually, that question may be a little confusing because in substance that would be a full line of rates from all SP&S points to local points on the Milwaukee.

Mr. Maguire: Yes.

By Mr. Torinus:

Q. Mr. Kennedy, does your firm in its business purchasing lumber off the SP&S and its subsidiaries partially load cars on those lines with a stop at intermediate points to complete loading?

A. Yes, we do.

Q. Is that done regularly, or occasionally, or how?

A. A percentage of the cars that we start on the SP&S and the OE, it would be a fairly heavy percentage of those cars.

Q. Now, those cars that are partially loaded with stops to complete loading, at what points, generally speaking, do you complete loading?

A. Primarily points on the GN and on the NP in both Washington and Montana.

Q. Now, does your company also bill out loaded cars for partial unloading at an intermediate point with completion [fol. 2421] of unloading at another destination?

A. Yes.

Q. When that is done, is it a regular thing to start out a loaded car for part unloading at a destination in one rate territory, with final destination in another rate territory?

A. No. They would primarily be in the same rate territory.

Q. To what extent, Mr. Kennedy, are any cars of your company rejected at billed destinations with the necessity of diversion to another destination?

A. Very seldom would there be any rejection. One or two cars in the past four or five years.

Q. Do you just recall one or two rejections in the last four or five years?

A. Yes.

Q. Now, would the addition of the route now requested by the Milwaukee, that is, a route from SP&S origins via the

Milwaukee east of Spokane to common points on the Milwaukee, and to destinations beyond the Milwaukee Railroad on its connections, would that be of any assistance to your firm in the marketing of the product which you sell?

A. No.

Q. Are the existing available routes adequate and sufficient to enable your firm to market your products?

A. Yes, sir.

Q. Now, is the request for the Milwaukee route, which I [fol. 2422] have described, is that necessary to assist you in handling any problem arising from stops to complete loading, or stops to partially unload?

A. No.

Q. Has your firm had any difficulty in past years in obtaining cars for loading routed by the SP&S to Spokane, thence Great Northern or Northern Pacific?

A. Only during those times when there was a general car shortage on the west coast.

Q. With respect to those cars which you handle as a wholesaler, do you order the cars?

A. No.

Q. Those are generally ordered by the mills from whom you purchase?

A. Yes.

Q. In selling cars, however, which are loaded out of those mills, have you had occasion to become familiar with the car supply?

A. Very definitely.

Q. To paraphrase Mr. Rockwood, and following the same pattern of questions which he asked of another witness, and not to make any odious comparisons, what has been your experience in respect to the car supply on the SP&S as compared with any other railroad in the Pacific Northwest?

A. As long as you say any other railroad, I can say it's been considerably better.

[fol. 2423] Q. I don't know whether I asked you or not, Mr. Kennedy, if your firm controls the routing of cars you sell?

A. It would be—in most cases, we control the routing. There are a few mills who still demand the privilege of at least naming the origin line because of timber deals, and so forth, which we assume they have.

Q. There's been talk in this record today about the transit cars. Can you tell us your understanding of what a transit car is?

A. It would be a car that would be bought by a wholesaler for—where it is unsold, or it might be given by a mill to a wholesaler to sell for a flat fee.

Q. Are all transit cars necessarily—do all transit cars necessarily move over circuitous routes because they're slow?

A. No.

Q. So that, if you didn't have circuitous routes or slow routes, would you still have transit cars?

A. Yes, sir.

Mr. Torinus: You may cross examine, Mr. Maguire.

Cross examination.

By Mr. Maguire:

Q. I understand, however, that less than 5 per cent of your business is in transit cars?

A. Yes, that's true.

Q. And do you have any particular origins or groups of origins or regions from which transit cars, this 5 per cent, [fol. 2424] originate, or is it spread all over?

A. It would be spread all over the northwest territory.

Q. So that the 5 per cent transit, would it be fair to say then that of business originating upon the SP&S System, that about 5 per cent of those cars are transit cars, following your general pattern?

A. It would be very difficult to answer that question, Mr. Maguire. I don't know exactly what percentage it would be off the SP&S, whether it would be less than that, or whether it would be 5 per cent.

Q. You don't know of any reason why it should be far from that percentage?

A. No.

Q. Now, I gather that your firm prefers to deal upon a basis of firm sales, rather than transit cars?

A. Very definitely.

Q. Am I to understand from you that on cars going

through Minnesota Transfer that, if the Milwaukee did get the rates established to points beyond its line—yes, to points beyond its lines to its connections, that you would not route any cars that way?

A. No, sir, I don't believe I said that.

Q. I'm asking you.

A. Oh, excuse me. We use all routes available.

Q. Yes, you would use that route if it were available?

[fol. 2425] A. We use all routes available.

Q. Now, you do buy some timber down on the Sweet Home branch?

A. Yes, sir.

Q. Do you buy any from the Willamette National or Santiam Lumber Company?

A. Yes, sir.

Q. Are they any of the companies you referred to who prefer to do their own routing on account of timber deals?

A. As I understand it, one of those companies has told us in the past that we could not route cars a certain way.

Q. On account of these timber deals?

A. I don't know whether that's the answer to why we couldn't do it. They just told us that they're big enough so that we should respect their wishes.

Q. Well, I'm not asking you the firms. I'm not asking you to declare any confidence, but in what areas are these mills located, with whom you deal, that have the timber deals?

A. As I said, I'm assuming that is the reason.

Q. I see. I'll join you on that assumption.

A. All right.

Q. Now, I don't want to embarrass you about this, but did you request the subpena be issued for your appearance here?

A. Yes, sir.

Q. That, I presume, was on account of the fact that you do sell some material to the Milwaukee, as well as the northern lines?

[fol. 2426] A. Yes, sir.

Mr. Maguire: I think that's all, Mr. Kennedy; thank you.

Exam. Dishman: Anything more, Mr. Torinus?

Mr. Torinus: That's all. Thank you very much.

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Rockwood: I will call Mr. Starr.

JOHN M. STARR was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Where do you live, Mr. Starr?
A. Eugene, Oregon.
Q. Will you state your full name to the Reporter?
A. John M. Starr.
Q. And in what business are you engaged?
A. Wholesale lumber.
Q. What's the name of the company that you're connected with?
A. Starr-Carter Lumber Sales.
Q. Is that a corporation or a partnership?
A. Partnership.
Q. Are you a partner in the firm?
A. That's right.
Q. And your business offices are at Eugene, Oregon?
A. Eugene, Oregon.
Q. How long have you been engaged in the business of [fol. 2427] distribution and sales of lumber from the Pacific Northwest?
A. Ten years.
Q. You're a wholesaler, you say?
A. That's right.
Q. You do not have any interest in any manufacturing plant?
A. No, none at all.
Q. How do you make sales of this lumber that is wholesaled by you? How do you dispose of it?
A. Well, we sell through eastern wholesalers, commission men.
Q. Do you make any direct sales to customers?
A. Well, we have a few direct accounts, probably 10 per cent of our business.

Q. What area in the Pacific Northwest do you go to to get the lumber that you sell? Where are the mills?

A. Well, we buy principally in Oregon. We do buy some in Washington, California. We buy a little lumber in Idaho. Did I say British Columbia?

Q. Do you buy in eastern Oregon and eastern Washington?

A. Well, we buy some in eastern Oregon. Yes, we do, we buy in eastern Washington too, around Spokane.

Q. What is the principal product that you sell?

A. Well, Douglas fir.

Q. What do you sell from the mills in eastern Washington and Oregon and Idaho?

A. Fir and larch and Ponderosa pine.

[fol. 2428] Q. Approximately how many cars a year do you handle as a wholesaler?

A. Well, we'll run between—oh, a million and a half to two and a half million feet a month. I'd say that's 60 to 90 cars.

Q. Sixty to 90 cars a month?

A. Sixty—oh, the best months it's been two and a half million feet, and our low months would probably have been 50, but it does go by the month.

Q. That 60 cars per month, that would be 720 cars a year, and at 90 cars a month that would be 1,080 cars a year. Your business will range within that bracket, from 700 to 1000 cars a year?

A. That's right. Bear in mind, it's a new business. We did 20 million feet last year, if you want to pin it down to the ticket. We couldn't go back to other years in this new company.

Q. How long has Starr-Carter been in existence?

A. It's been in a year and two months.

Q. You had experience in the wholesaling business before that?

A. That's right.

Q. In the Eugene area?

A. That's right. I was in there close to 10 years.

Q. Does your firm engage in firm sales or transit sales?

A. We're entirely on firm orders.

Q. Is there any reason why you handle only firm orders,

rather than engage in the transit business? Why do you [fol. 2429] stay out of the transit business?

A. Well, we prefer the firm order business. It's a much healthier business in my opinion, and we just don't—in order to be in the transit business, I find that you've either got to be in one or the other. You can't very well do both.

Q. Well, is there any reason why you prefer firm business, and why you dislike to get into the transit business?

Mr. Maguire: Pardon me, Mr. Starr.

Mr. Examiner, may it be understood that my objection runs to this testimony as to a dissertation on the relative merits of firm and transit business? I don't wish to repeat it again.

Exam. Dishman: Yes.

By Mr. Rockwood:

Q. Is there any reason why you prefer the firm business, rather than the transit business?

A. Well, I know the firm order business. I think it's the best way to market lumber.

Q. That is, the best way for the industry to market lumber?

A. Yes, that's right.

Q. What are your objections to the transit business as to marketing lumber?

A. Well, it's a gamble, going up and down with the market. On firm orders, you always know where you stand.

Q. That method of doing business, the transit business, does that have any influence from day to day on the price of lumber?

A. I would say it does, yes.

[fol. 2430] Q. What influence does transit business have on the market price of lumber, and how does it come into being? How does that occur?

A. Well, if you get enough cars out unsold, it doesn't take the buyers on the other end long to figure it out, and they kind of hold off buying, and, naturally, it pushes the price down.

Q. And does that affect the price on which you can make firm sales?

A. Oh, yes, they seem to think they ought to go down too.

Mr. Maguire: I can't resist saying it does too.
The Witness: That's right.

By Mr. Rockwood:

Q. Is that what you don't like?
A. That's right.
Q. Do you know whether the transit method of routing business has any affect on car supply? Do you know?
A. Well, if there's enough of them out and not selling and they are backing up at diversion points, it's bound to affect the car supply. If a car isn't made empty, you can't put any more lumber in it.
Q. Do you know whether that has any affect on the ability of the rail carriers in the Pacific Northwest to supply cars for loading out in this territory? Do you know?
A. Well, I wouldn't know. I imagine that—

Mr. Maguire: Just a moment. The answer was—the witness says he doesn't know, and I would much prefer that the witness not imagine for the record here. He started to say "I imagine . . ." something.
[fol. 2431] Exam. Dishman: Well, state of your own knowledge. If you don't know, just say so.
The Witness: Will you repeat the question?

(Question read.)

Mr. Rockwood: Read the Examiner's question.
Exam. Dishman: I just said: If you don't know, say so.
The Witness: Well, I'm not in the railroad business. I don't know.
Mr. Rockwood: That's a fair enough answer.

By Mr. Rockwood:

Q. In what territory do you sell lumber?
A. Well, Chicago. We sell quite a bit in eastern territory and the midwest.
Q. Do you know how your sales are divided between Chicago and east, and west of Chicago?

A. I'd say we do 50 per cent of it at least at Chicago and east.

Q. And the balance in the west, west of Chicago?

A. That's right.

Q. How far west of Chicago do you make your sales?

A. Well, we sell in Iowa, Missouri, Illinois. We sell very little in the Dakotas, Minnesota, Wisconsin.

Q. You sell very little in Minnesota and Wisconsin?

A. Yes.

Q. Go ahead.

A. In the Dakotas. I don't remember of ever selling a [fol. 2432] car in Montana. We sell quite a bit in Colorado.

Q. Do you sell down in Texas and the southwest area?

A. Very little.

Q. Who is responsible for the routing of the cars which you sell as wholesalers?

A. Well, the car orders usually have the delivering line shown. We supply the rest.

Q. So, except for the designation of the delivering line, you route the cars?

A. Yes.

Q. Do you sell from mills on the SP&S?

A. Yes, we do.

Q. Do you sell from mills on the Santiam Branch of the Oregon Electric?

A. That's right.

Q. Where are the mills located on the SP&S from which you make purchases and make sales?

A. Well, on the Santiam Branch, at Foster, Sweet Home, and Lebanon, and from Eugene and Junction City on the Oregon Electric.

Q. Do you buy from any mills on the lower Columbia lines from Portland to Astoria?

A. No, I don't do any business down there.

Q. Do you buy any from mills on the main line of the SP&S east of Portland, on up the river from Portland?

A. No. We don't have any mills up there we do anything with.

[fol. 2433] Q. Well, from mills on the Oregon Electric and the SP&S that you enumerated—I guess all of them are on the Oregon Electric—what routing do you use on eastbound lumber?

A. Well, the OE, SP&S, GN or NP through the transfer or Laurel.

Q. Through the transfer or Laurel?

A. That's right.

Q. Do you ship any OE, Great Northern, through Klamath Falls to Bieber?

A. Well, an occasional car. We had a very few recently into western Colorado that had to go that way.

Q. Do you buy from mills that are located on the Southern Pacific in Oregon?

A. Definitely.

Q. Are your purchases from Southern Pacific points greater or less than your purchases from Oregon Electric points?

A. Oh, they're far greater.

Q. Of your total, how much comes off the SP&S, percentage-wise—off the SP, I should say?

A. I'd say 80 per cent.

Q. Where are those SP mills located?

A. Well, from Sacramento to Portland.

Q. In Oregon, south of Eugene? Are some of those mills south of Eugene?

A. Oh, yes, sure; Roseburg area, Grants Pass, Medford, Coos Bay.

Q. And from Southern Pacific mills between Eugene and Portland?

[fol. 2434] A. Yes.

Q. What routes are available to you generally for the disposition of cars originating on the Southern Pacific?

A. Well, SP, UP; SP, D&RG; or SP through Portland and the northern lines.

Q. Do you ship any via SP, UP, Marengo, and thence Milwaukee?

A. No, we don't.

Q. Are you aware of the fact that there is such a route?

A. Yes, we're aware of the fact.

Q. But you never use it?

A. No. We may have had to use that on occasion to go into Denver. However, it isn't common routing with us.

Q. The Milwaukee doesn't reach Denver, of course?

A. I was thinking—how you get to the Union Pacific to reach Denver when it comes off the Milwaukee.

Q. I don't know.
A. I'm confused there myself.

Mr. Maguire: You don't want to cross examine your own witness on that?

Mr. Rockwood: No. I say I don't know. I haven't the slightest idea.

By Mr. Rockwood:

Q. You have before you a map of the SP&S System and the Milwaukee System east of Spokane, being a copy of Exhibit 28. Have you seen a copy of that map before today?

A. Yes, I have.

[fol. 2435] Q. Has that map been described to you to describe the rate situation as it now exists between SP&S points and points served by the Milwaukee? Has it been explained to you?

A. Yes, it has.

Q. Do you presently know—could you tell us what those rates are? I'm just asking you whether you're generally familiar with them, or if you're familiar with them in detail.

A. You mean the—

Q. Well, is your knowledge of that map and its contents general, or do you feel that you have detailed knowledge of the map?

A. No; it's general.

Q. Are you familiar with the fact, as shown on that map and as explained by another witness, that the rates do not apply from the Santiam Branch of the Oregon Electric to local points on the Milwaukee east of Mobridge, via Spokane? Were you aware of that fact?

A. That they do not apply?

Q. That they do not apply from the Santiam Branch?

A. Yes.

Q. If those rates were made applicable from the Santiam Branch to local Milwaukee points east of Mobridge, would you have occasion to use them for sales to Milwaukee local points east of Mobridge? Milwaukee local points, I'm saying.

A. Well, if we sold a car and it was going to a Milwaukee local point, and the rates didn't apply, naturally, we'd

[fol. 2436] want—I don't know of any time you can't get in there on local—to a local point—maybe I don't understand the question.

Q. To that territory along the Milwaukee in Iowa, Wisconsin, Missouri, shown in yellow there, you understand that you can get into that territory via Minnesota Transfer and the northern lines with the Milwaukee beyond?

A. Beyond the Minnesota Transfer?

Q. Yes.

A. Yes, you can.

Q. Do you understand that you cannot get into that territory—

Mr. Maguire: Just a moment. I think I've stood just about as much of this instruction of the witness from Counsel as I should be expected to. I think Counsel should ask the witness what the witness knows about things, instead of telling the witness about things, and I object to that line of questioning as leading.

By Mr. Rockwood:

Q. Do you know how—

Mr. Rockwood: It probably was.

By Mr. Rockwood:

Q. Do you know how you could reach those Milwaukee points shown in blue on that map, from what SP&S points you could reach them? Do you know? Shown in blue on that map?

A. Route via Spokane.

Q. And the Milwaukee?

A. Right.

Q. Do you—I think you said your business in North [fol. 2437] and South Dakota was very light?

A. It amounts to nothing.

Q. Do you have any sales at Milwaukee points shown in blue on that map?

A. Well, I don't recognize any of those points. There must be some there that we do business with in Iowa. A wholesaler there covers the state very well.

Q. Covers the state of Iowa very well?

A. Yes.

Q. Where are his headquarters?

A. Waterloo.

Q. And Waterloo itself—can you get in via the northern routes to Waterloo itself?

A. Most of the lumber that we ship there comes off the—

Mr. Maguire: Just a moment, please. The question addressed to the witness was whether they could get lumber into Waterloo through the Minnesota Transfer. I believe you didn't understand the question.

Exam. Dishman: Can you answer that?

The Witness: I just don't know if that routing applies.

By Mr. Rockwood:

Q. You were about to tell the source of the lumber that you sell to the gentleman who has headquarters in Waterloo. Where is that?

A. Yes. It's mostly kiln dried lumber, and we buy it off the Southern Pacific. We don't have any trouble get-
[fol. 2438] ting into any points to sell it.

Q. Does your company engage in the practice of starting out a car with a part load to stop at another point to complete loading?

A. Not if we can help it.

Q. Does your company engage in the practice of starting out a load billed to part unload at one station and to complete unloading at another station?

A. Occasionally.

Q. In what territory do you do that kind of business?

A. Well, it's—I couldn't pin it down to any territory.

Q. When you say occasionally, is that once a month or 10 times a month, or what? You said occasionally.

A. Oh, it would happen maybe once a month.

Q. Have you ever had cars rejected, involving the necessity of moving that car to another destination to dispose of it?

A. No.

Q. Under the existing railroad routes, do you have any difficulty in marketing all the lumber that you have to sell?

A. Have no difficulty at all.

Q. To the best of your knowledge, are the present routes adequate to enable you to do business?

A. Yes, they are.

Q. Are you generally familiar with the car supply situation at mills in the Pacific Northwest?

[fol. 2439] A. Yes, I'd say I'm familiar. We trace the shipments all the time.

Q. Can you tell us what the experience has been on purchases by you from mills on the Oregon Electric or the SP&S with respect to the ability to get cars in the last few years?

Mr. Maguire: Now, just a moment.

Before the witness answers that, Mr. Examiner, I submit the witness is not qualified to answer any questions on car supply because his answer to it was that his familiarity with car supply grew out of his experience in tracing cars. Those are cars that are already in transit. That's what they were tracing.

The Witness: No, I didn't mean it that way.

Mr. Maguire: Did you mean it differently? Then I cut you off. I'm very sorry.

The Witness: I meant calling up the mills and tracing for a shipment on our order.

Mr. Maguire: Oh, I get you. I take it all back then. That's quite all right.

By Mr. Rockwood:

Q. Well, what has been the car supply situation on Oregon Electric and SP&S loading points in the last few years?

A. I'd say they're better than the SP.

Q. To your knowledge, has there been any serious car shortage, we'll say, in the last three or four years?

[fol. 2440] A. Oh, we always have seasonal ones. It usually hits in the summertime, and it seems to be more severe on the SP than on the northern lines and the SP&S.

Mr. Rockwood: You may cross examine.

Mr. Torinus: Just a minute, Mr. Maguire. I have one or two questions in the nature of direct.

By Mr. Torinus:

Q. I want to ask you an obvious question before Mr. Maguire gets a chance to. Are you any relation to Paul Starr, who was formerly Western Traffic Manager of the Great Northern in Seattle?

A. Brother.

Q. Now, Mr. Starr, in your purchases of lumber as a wholesaler from mills in the Pacific Northwest, do you confine your purchases to large mills, or small mills, or do you buy from mills of all types and sizes?

A. We buy from mills of all types and sizes.

Q. And I think you testified that at present you have no particular problems in disposing of your cars, and that occasionally you ship out a transit car, is that correct?

A. Well, it's an occasion.

Q. Now, when you do—

A. An exception.

Q. When you do ship out a transit car on an occasion or as an exception to your general practice, why do you happen to ship out any cars as transit cars?

[fol. 2441] A. Well, in our business, where you're trading with the mill, many times you're trying to buy something from them that they might turn around and sell it to you. At the same time, they'll say, "And you take this one here that I'm trying to sell." So, in order to put your deal together, you'll take it. It doesn't necessarily mean it's transit, but the first thing you know it will be shipped, and it won't be sold. That's the only time we ever do transit business.

Q. Will you state whether or not the situation is this: That you have some mills from whom you regularly buy and, in order to keep them as customers, you occasionally take a shipment off their hands that they would like to have you handle, is that correct?

A. That's right, yes.

Q. And if you did not take the shipment off the hands of those mills, what would happen to your customer relations with such mills?

A. Well, we think it's good business. We buy ones that a lot of other people are definitely after. It's just a matter of policy.

Q. Well, is that policy dictated or not dictated in any way by competition of the transit operators in this territory?

A. Well, yes, it's just—we're just doing it to compete.

Q. Now, Mr. Starr, are all the transit cars, which are shipped out of here as transit cars, necessarily shipped over [fol. 2442] circuitous routes or slow routes?

A. Well, to my knowledge, the big transit shippers use circuitous routes.

Q. Just because a car originates in this territory and is shipped east unsold, does that necessarily mean that it is routed for movement over a circuitous route?

A. Oh, no. I wouldn't say—I'd say not.

Q. And when you do have a transit shipment that is an unsold shipment that moves east over a route which is not circuitous, and it reaches a diversion point, such as Minnesota Transfer, and is unsold, then what happens to the car?

A. Well, it's eventually sold. It will—there might be a little demurrage on it, but I manage to dispose of them.

Q. In other words, if I understand you correctly—

Mr. Maguire: Now, just a moment. Now, this "In other words" has an ominous sound. Mr. Torinus is still giving this witness direct examination.

Mr. Torinus: That's correct.

Mr. Maguire: And I know that his "In other words", that is going to give the witness a package to swallow as a whole.

Exam. Dishman: Will you ask him a direct question?

Mr. Torinus: I was about to ask him a direct question, Mr. Examiner.

Mr. Maguire: Maybe too direct, however.

Mr. Torinus: I'll eliminate the prefatory remark, "In [fol. 2443] other words."

By Mr. Torinus:

Q. Would the elimination of slow routes then necessarily eliminate transit business?

A. No, I don't think so at all.

Mr. Torinus: I have no further questions.

Cross examination.

By Mr. Maguire:

Q. Well, of course, Mr. Starr, when you buy one of these transit cars, which is in a way part of a package deal, I imagine you'd characterize it that way?

A. That's right.

Q. You're also in competition with other wholesalers who deal on a firm basis too who have to swallow cars like that once in a while? There's competition between firm cars as well as transit?

A. That's right.

Q. And is it your understanding from the explanation of this map that you can reach this territory which has been referred to, which is blue territory, that you can reach that via the Milwaukee from any point on the SP&S?

A. Right.

Q. And how about the yellow?

A. No.

Q. It's your understanding that—

A. Not that.

Q. That you can via Spokane?

[fol. 2444] A. That's right.

Q. And when you talk about the firm order business being healthier, I presume you have reference to your own health? That you don't have to worry so much about a car than if it was transit?

A. That's right.

Q. And that's why you're definitely lined up with the firm dealers, rather than the transit dealers?

Mr. Torinus: I'll object to that as not understandable. What does he mean "lined up"?

Mr. Maguire: Maybe if the witness understands it, he can answer it. I'm not asking you.

Mr. Torinus: It isn't clear in the record, and it should be made clear in the record.

By Mr. Maguire:

Q. Do you understand what I mean?

A. I understand what you mean. I buy from mills on firm orders that no doubt they'd sell to transit operators.

Q. What I'm getting at is: You belong to the school of thought in the lumber business which believes that selling by firm order is the better way to carry on business, rather than to handle transit cars?

A. Right.

Mr. Maguire: That's all. Thank you.

Exam. Dishman: Any further questions?

Mr. Torinus: No questions.

Exam. Dishman: Witness excused.

* * * * * * *

[fol. 2450]

BEFORE THE INTERSTATE COMMERCE COMMISSION

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

v.

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, ET AL.

Docket No. 31466

Room 403
Uptown Station & Federal Courts Building
Fifth and Market Streets
St. Paul, Minnesota

Transcript of Proceedings—Tuesday, April 5, 1955

Met, pursuant to adjournment, at 9:30 a.m.

Before:

L. H. Dishman, Examiner.

Appearances:

As heretofore noted.

ADDITIONAL APPEARANCES:

Frank A. Emme, 305 First Federal Building, St. Paul, Minnesota, appearing for non-operating Brotherhoods on Great Northern Railway.

Henry Beck and Mark Houston, 207 Anchor Building, St. Paul, Minnesota, appearing for non-operating Brotherhoods on Northern Pacific Railway Company.

* * * * * * *

[fol. 2456] A. F. BOWMAN resumed his testimony as follows:

Cross examination.

By Mr. Rockwood:

Q. For the reporter, will you please state your full name [fol. 2457] and your position with the company that you represent?

A. A. F. Bowman, B-o-w-m-a-n, traffic manager, J. I. Case Company, General Offices, Racine, Wisconsin.

Q. You testified previously in this case at the hearings in Chicago, Illinois, on November 9 and 10, did you not, Mr. Bowman?

A. Yes.

Q. And you prepared, did you not, the three exhibits which were filed after the conclusion of that Chicago hearing and which have now been admitted as Exhibits Nos. 23, 24, and 25?

A. Yes, sir.

Q. I call your attention to page 961 of the record, and you have indicated at that page—you have the transcript before you, do you?

A. Yes.

Q. You indicated at that page, on that page, that the J. I. Case Company had 26 dealers, and I read: "Along the S. P. and S. and Oregon Trunk; we have 26 dealers: Question: S. P. and S., Oregon Trunk and Oregon Electric? Answer: Yes". Then on page 963 of the transcript you testified as follows, and this is cross-examination by me: "And you have 26 dealers located between Portland, Oregon, and Spokane, Washington? Answer: Yes, sir".

Following that I requested a statement of the 26 dealers that you referred to and the stations at which they are located.

[fol. 2458] Then further on page 965 of the transcript it was proposed by Mr. Maguire, as he read a moment ago, that the exhibit which you were to get in response to my request would include a list of your dealers along the Oregon Trunk and Oregon Electric: "That is, on the entire

S. P. and S. system", and I agreed that that would be appropriate.

Exhibit No. 23 is the exhibit which you prepared in response to the request that I referred to, is that correct, your Exhibit 23?

A. If that is the correct number and it carries the names of those points and dealers that is correct.

Q. All right. That list of dealers is not confined to dealers located at stations on the S. P. and S. System, is it?

A. Will you please repeat the question?

(Question read.)

A. To support the answer—

Mr. Rockwood—interrupting:

Q. Just a minute, will you answer my question, please?

A. I will have to answer in the affirmative.

Q. All right.

Mr. Maguire: Just a moment. If the witness wishes to explain his answer, I think he is at liberty to do so. He started an explanation and Mr. Rockwood cut him off.

Exam. Dishman: You have answered the question?

The Witness: I should like to amplify that, please.

[fol. 2459] Exam. Dishman: All right.

A. In support of that statement and that exhibit I have here an explanatory letter by our general sales manager for the territory involved explaining this situation relative to dealer locations and dealer business, and as it overlaps one railroad or another that dealer may not be located on the lines of the railroad, however, he is still our representative, dealer representative on the railroad.

By Mr. Rockwood:

Q. Specifically the first exhibit you list in the Exhibit 23 is the station of The Dalles, D-a-l-l-e-s, which is in the state of Oregon and served solely by the Union Pacific Railroad, is that correct?

A. As far as being served solely by the Union Pacific Railroad, I will accept your word as correct. I haven't checked it.

Q. Don't you know? Do you know where The Dalles is in Oregon?

A. Oh, practically so, yes, sir.

Q. It is on the south bank of the Columbia River on the Union Pacific a distance east of Portland, is it not?

Mr. Maguire: Just a moment. Mr. Examiner, counsel is belaboring the point because the witness has stated he will accept counsel's word for it.

Mr. Rockwood: I think I am entitled to find out what familiarity this witness has with his own exhibit and not take my word for anything.

Exam. Dishman: Well, is that your understanding of [fol. 2460] the location?

The Witness: That is fairly correct as far as my understanding is concerned.

By Mr. Rockwood:

Q. On the second page of this Exhibit, Exhibit 23, you show the station of Cheney. What railroad service station is Cheney, do you know?

A. I haven't recently made an investigation of that station.

Q. Do you know whether or not that station is served by the Spokane, Portland and Seattle Railway Company?

Mr. Maguire: The exhibit speaks for itself on that, Mr. Examiner. There is a symbol "A" and it is explained in the footnotes as not located on the S. P. and S. System but served the S. P. & S. stations.

Mr. Rockwood: Thank you for coaching the witness.

Mr. Maguire: He won't be.

Mr. Rockwood: You can trust me for that.

By Mr. Rockwood:

Q. Take the station of Madras, Oregon. What railroads serve Madras, Oregon?

A. Oregon Trunk Line.

Q. And the Union Pacific?

A. Not that I know of.

Q. Do you know whether or not the Union Pacific and

the Oregon Trunk use common rails from the south bank of the Columbia River to Bend?

A. I don't know that.

[fol. 2461] Q. So that you don't know—I think it has been answered.

Take the station of Prineville, what railroad serves the station of Prineville?

A. Prineville is not located on the S. P. and S. but serving S. P. and S. System stations.

Q. What railroad is it located on?

A. I don't have that information.

Q. Do you know whether or not it is on the City of Prineville Railroad?

A. No.

Q. Do you know where the City of Prineville Railroad is?

A. No, sir.

Q. Do you know with what railroads the City of Prineville connects?

A. No, sir.

Q. So for the city of Prineville you don't know what rail service they have?

A. No.

Mr. Maguire: I think he has already answered that question, Mr. Examiner. Counsel is running in the answer on him now.

By Mr. Rockwood:

Q. Is the answer yes?

Mr. Maguire: He has already answered.

Exam. Dishman: You said you didn't know?

The Witness: That is correct.

By Mr. Rockwood:

Q. What railroad serves the Clatskanie station?

[fol. 2462] A. S. P. and S. Railway.

Q. On what line is the station located, do you know?

A. I don't have a map before me. On answering your question I'd have to give it to you by kind of a general

recollection but I think it is on the main line of the S. P. and S.

Q. You don't know whether it is between Spokane and Portland or on the branch line down to Astoria?

A. I think it is on the main line, near the Portland side.

Q. Do you know here St. Helens is, what railroad serves St. Helens?

A. S. P. and S. Railway.

Q. Do any other railroads serve St. Helens?

A. That I cannot tell you, sir.

Q. What railroad serves Astoria?

A. The S. P. and S. Railway.

Q. Any other, do you know?

A. Not that I can give you directly.

Q. What is the station of Hillsboro, H-i-l-l-s-b-o-r-o, what railroad serves Hillsboro?

A. Oregon Electric.

Q. Does the Southern Pacific serve Hillsboro?

A. That I can't tell you.

Q. Would your answer be the same for the station of Albany? What roads serve Albany?

[fol. 2463] A. Albany is on the Oregon Electric.

Q. Is it served by the Southern Pacific?

A. That I am quite sure.

Q. And ~~your answer~~ is yes, it is?

A. Yes, it will be yes in that respect.

Q. Harrisburg, what railroads serve Harrisburg?

A. Oregon Electric.

Q. And what other, if any?

A. That I am not able to answer you.

Q. Can you tell us whether or not it is served by the Southern Pacific?

A. No, I can't tell you that here.

Q. What about the station of Salem, what railroad serves Salem?

A. That is also on the Oregon Electric.

Q. And what other?

A. That one I am quite sure is served by the Southern Pacific Railway.

Q. Take the station of Vancou er, that is designated as a point in Washington, what railroad serves Vancouver, Washington?

A. The S. P. and S.

Q. And what others?

A. I am unable to answer.

Q. Can you tell us whether or not the Great Northern, and Northern Pacific, and Union Pacific also serve?

A. I can't tell it to you. I might guess it. I have been [fol. 2464] quite acquainted with that point but the direct answer I can't give.

Q. Do you know whether or not more than one railroad serves Vancouver?

A. I believe it does but I can't tell it to you.

Q. You don't know.

What railroad serves Goldendale?

A. S. P. and S. Railway.

Q. Any other?

A. Not that I know of.

Q. What about Kennewick?

A. That is also on the S. P. and S. Railroad.

Q. Is it served by any other railroads?

A. I can't tell you that.

Q. Do you know whether it is served by any other railroads, whether or not you can name them?

A. I can't answer that.

Q. Summarizing this exhibit, can you tell me if it is not a fact that of all the locations shown in the first column of your exhibit the only ones served solely by the S. P. and S. and no other railroads, are Clatskanie, St. Helens, Oregon, Kennewick and Goldendale, Washington? Do you know whether or not that's true?

A. I can't answer that directly. I am not sure about it. I haven't made that close a check of those stations.

Q. Do you know whether or not any or all of these dealer [fol. 2465] locations listed in the first column are served by spur tracks?

A. No, sir, I don't.

Q. Do you know whether any of them are located on highways away from the railroads and not served by spur tracks?

A. Not directly I don't.

Q. You don't know?

A. No.

Q. I asked you specifically with respect to Albany, Harrisburg and Salem if it is not a fact that they are located on railside but on the other hand are located on the main highways out of those towns, you don't know whether that is a fact or not?

A. No, I have never been in that territory and visited them, I can't make to that a direct answer.

Q. Can you tell us whether the fact is that any of these stations within the first column of this exhibit are served by Union Pacific? Are any of them?

A. I think I have already answered you that. Directly I will have to answer you no, I cannot answer that.

Q. You have mentioned one or two that are served by the Southern Pacific, Salem and Albany, I believe. You did know those were served by the Southern Pacific?

A. I am quite sure, yes.

Q. For those that are served by the Union Pacific and particularly for those that are served by the Southern Pacific, you can route from your factories in the middle-[fol. 2466] west via Milwaukee to Marengo, Washington, thence Union Pacific and Southern Pacific to Southern Pacific destinations, and on that route you can stop for partial unloading on points on the Union Pacific and Southern Pacific, can you not?

COLLOQUY BETWEEN EXAMINER AND COUNSEL

Mr. Maguire: Mr. Examiner, I object to that question upon the ground that it is not included within the proper scope of this cross-examination. This cross-examination was solely upon the accuracy of Mr. Bowman's figures or his statements in Exhibit 23. Now counsel is going back and starting to rehash the entire cross-examination of Mr. Bowman which he conducted at Chicago, and I submit that that is improper, that it is improper cross, and should not be allowed.

Mr. Rockwood: Mr. Examiner, if Mr. Bowman had had the information available at the November hearing I would have proceeded further with cross-examination. I was unable to do so because he did not have the information as to his dealer locations. Now having given this informa-

tion as to dealer locations I wish to proceed with the cross-examination which I would have indulged in at that time had the information been available.

Mr. Maguire: If we may have a moment here, Mr. Examiner, I think I can find points in the record where almost this identical question was asked by Mr. Rockwood in Chicago.

Exam. Dishman: If the witness can answer the question, we might get it on the record.

Did you understand the question? Can you answer it?

[fol. 2467] Mr. Maguire: Mr. Examiner, I don't wish to be insistent about this. It is not a question of whether the witness can answer it. The question is whether it is a proper question.

Exam. Dishman: We want all the information we can get on this.

You say you would have asked this question at Chicago?

Mr. Rockwood: I would have proceeded with this line of cross-examination that I am about to embark on if I had had the information as to these dealerships in Chicago.

Exam. Dishman: I will rule against, that the witness may answer.

Do you understand now what the question is?

The Witness: I would like to have it repeated, please.

Exam. Dishman: Will you read it back?

Mr. Maguire: Before the question is repeated—I don't wish to confuse the witness by having to have the question reread again—I wish to call attention to Mr. Rockwood's cross-examination which starts on page 960 of the record, and there the question was asked: "And from all of those plants on shipments of agricultural implements westward to the Pacific Northwest, you can route from the plant via the road serving the plant to Minnesota Transfer, thence go Great Northern or Northern Pacific to Spokane, thence S. P. and S. to all points on the S. P. and S., Oregon Electric, and Oregon Trunk, on joint through rates?" That was the first question.

[fol. 2468] The second question was: "You can also move to all destinations on the Great Northern and the Northern Pacific in Oregon and Washington; well, we will say in

Montana, Idaho, Oregon and Washington, using one of the northern lines, Great Northern or Northern Pacific?"

The third question was: "From all of those plants, and in all my discussion I am excepting the Louisiana plant and the Stockton plant, from all of those plants you likewise can go to the Pacific Northwest by routing from the plant by the railroads serving the plant to Omaha, and thence Union Pacific and Southern Pacific, to reach all points on the Union Pacific and Southern Pacific in the states of Idaho, Oregon and Washington?"

Then the fourth question was: "You also have a route from all of those plants that are served by the Milwaukee, to move by the Milwaukee to Marengo, Washington, and thence Union Pacific to reach all points on the Union Pacific and Southern Pacific in Oregon and Washington west of Marengo?"

Those are the questions that were asked.

Exam. Dishman: And were they answered?

Mr. Maguire: They were answered.

Mr. Rockwood: My question that I asked this witness, if it wasn't clear, had a question of partial unloading which is not covered by any of those points.

Exam. Dishman: Now you want to know about the partial unloading?

[fol. 2469] Mr. Rockwood: I want to talk about these routes with the partial unloading privileges.

Mr. Maguire: Technically Mr. Rockwood did not ask that question so that hasn't been covered.

Mr. Rockwood: Let's start all over again. There has been a lot of talk here.

By Mr. Rockwood:

Q. Mr. Bowman, for shipments to all points included in your list of dealerships here, which are 14, which are served by the Southern Pacific, you can route via the Milwaukee to Marengo, thence Union Pacific and Southern Pacific to destinations, with the privilege of stopping for partial unloading at points on Milwaukee and at points on the Union Pacific and the Southern Pacific, can you not?

A. Yes, sir.

Q. Also for those stations which are served by the Southern Pacific and Union Pacific included in your Exhibit 23, you can route from Omaha via the Union Pacific and thence Southern Pacific, in the case of Southern Pacific stations, with the right to stop for partial unloading along the Union Pacific and Southern Pacific, that is correct, isn't it?

A. Yes, sir.

Q. With all points in this exhibit which are served by S. P. and S. Lines which would not include The Dalles, Oregon, as an example, you can route via Minnesota Transfer the Northern Lines, thence S. P. and S., with the privilege of stopping for partial unloading at any intermediate point along the Northern Lines or the S. P. and S., [fol. 2470] is that correct?

A. That is correct.

Q. If I am correct in my summarization of your exhibit that there are only four stations which are served solely by the S. P. and S., that is, Goldendale, Clatskanie, St. Helens, and Kennewick, if all the other stations in your exhibit, all the other ten stations, are served either by the Union Pacific or the Southern Pacific, then those U. P. routes, either from Omaha or via Marengo are open to serve all of those stations except the four I named, isn't that right?

A. For a full answer to a question of that sort it would have to be the desire of the dealer who is receiving the freight as to where he wished to have that freight delivered. In answering your question as to whether it is possible to make such a move I would say yes to your question.

Q. All right, and to those four stations I last named served by the S. P. and S. you do have available that route I referred to through the Minnesota Transfer and Northern Lines?

A. The Northern Pacific and the Great Northern. I just want to get that correct.

Q. Now, for any of these 14 stations listed in Exhibit 23 can you tell us whether anyone of those dealers in the year 1953 or 1954 received a carload of freight or a part carload of freight from your company, do you know?

A. I didn't make any such a check.

[fol. 2471] Q. So that you are not able to say as a fact that any one did receive a single carload or a part carload?

A. I would prefer to answer your question on the basis of a longer period of time than two years.

Q. All right.

A. We have been in business over a hundred years and we expect to stay in for a long time yet and I think we ought to talk generally over-all and not confine ourselves to just two years.

Q. You have been in business longer than the S. P. and S. Since the S. P. and S. has been built, it began operation in 1909, can you tell whether any one of these dealers at any one of these stations ever received from J. I. Case & Company a carload of freight or part carload of freight from middlewestern factories?

A. Well, I can't answer that question today, but I can answer for the very present that only recently—I am not giving you the station—put three carload of freight to the S. P. and S. points, but I didn't even bring a bill of lading along to support that. I didn't think it was going to be necessary.

Q. Do you know what stations they went to?

A. No, I don't know what stations they went to.

Q. You don't know whether it was any one of the stations listed in your Exhibit 23?

A. I didn't think it was going to be necessary. I would have done so, if I had thought so.

Q. Does your company maintain a warehouse stock in Portland?

[fol. 2472] A. Sir?

Q. Does your company maintain a warehouse stock in Portland?

A. In Portland?

Q. Yes.

A. Yes, sir.

Q. Is it not true that to a large extent your dealerships listed in this Exhibit 23 get their stock right out of the Portland warehouse?

A. No, sir.

Q. Many of them do, do they not?

A. I doubt it.

Q. Where does the Portland stock go?

A. As a way of explanation of business through the Portland house it is not our intention to carry a heavy stock. It is our intention to serve the dealerships in the territory where the goods are sold by direct shipment.

Q. What do you do with the Portland stock? You say it isn't heavy, what do you do with it?

A. It is delivered to points in the territory wherever there is a demand for the particular goods.

Q. Including these 14 dealerships that you have listed in this exhibit?

A. Yes, sir. I doubt if there is very much of a back-haul into that territory. Mostly it would be beyond Portland.

Q. Down in the Willamette Valley?

[fol. 2473] A. I think so.

Q. Stations like Salem, Albany, Harrisburg?

A. Yes, sir.

Q. And down the Astoria line, stations such as St. Helens, Clatskanie and Portland, or Astoria, excuse me?

A. Yes.

Q. They get their stock, some of it, from the Portland warehouse?

A. I believe that is so.

Q. How does the stock which moves out of the Portland warehouse to these dealerships move, by common carrier truck, by private truck, or by rail, or by driving away under the equipment's own power, do you know?

A. I believe the greater part of it would move by motor carrier transportation.

Q. Either dealer or common carrier?

A. Dealer or common carrier. If there is a contract carrier in the area it would be motor truck.

Q. Isn't it a fact that the dealers come in with their own trucks and take a load down to their store?

A. Yes, sir.

Q. That is a common practice?

A. Yes, sir.

Q. So it would be rare, would it not, that you would find a rail shipment out of the Portland warehouse to any of the dealerships in this area?

[fol. 2474] A. I think it would be an exception more than the rule.

Q. If your equipment is stored in your Portland warehouse stock, is it handled under storage and transit rates at the through rate at the ultimate destination to which the material goes?

A. That is the arrangement we have operated on to the extent to which it has been used. I can't give you an answer to that today.

Q. If, for example, a carload moved over the Milwaukee, billed to part unload on the Milwaukee at the port west of Mobridge, South Dakota, and the balance of the car moved into Portland, would you be able to ship out of the Portland warehouse on a through rate or would you have to pay a local rate out of Portland?

A. I believe you'd have to specify further as to routes before I can answer that question.

Q. Well, is it not true that, if a shipment of your commodity has had any transit privilege on the Milwaukee west of Mobridge, or on the Great Northern west of Snowden, Montana, or on the Northern Pacific west of Mandan, or on the Union Pacific west of Cheyenne, Wyoming, it is not entitled to the transit rate out of Portland, after storage in Portland?

A. I don't believe that.

Q. Am I wrong in that or are you just not sure what the answer is?

A. I think we are still entitled to storage or to operate [fol. 2475] that movement under storage in transit from the Portland warehouse, if we so desire.

Q. If it has been partly unloaded at those points I specified?

A. If it had been served with a partial unloading en route.

Q. We will have to check that. If I am wrong and you and I disagree we will have to check your records.

You don't have the tariff here of course?

A. No, sir.

Q. If one of these 14 dealers listed in your Exhibit 23 have a stock of goods from which they sell to their customers does the J. I. Case Company have anything to say as to how that sale will be handled from the dealer's show-

room to the customers, that is, by common carrier, truck, or private truck, or rail, or the equipment moving under its own power?

A. That's strictly the business of the dealer.

Q. And you don't know how that is handled?

A. No, sir.

Q. Some of your equipment does move out of the showrooms under its own power, does it not?

A. Speaking of the showrooms are you speaking of dealers or the Case Company?

Q. Dealer's locations.

A. That is the privilege of the dealer, however he moves it is—

Q. (Interrupting) You know a small tractor—

[fol. 2476] Mr. Maguire: Just let him finish his answer, if you don't mind.

Mr. Rockwood: Sure. I thought he had.

Mr. Maguire: No, he hadn't.

By Mr. Rockwood:

Q. Complete your answer, please.

A. I say that is strictly the business of the dealer. However he moves those out, that is his own affair, we have no control or exercise no control over such a movement.

Q. Do you know in practice whether some equipment moves out of the dealer's place of business under its own power?

A. I would believe it would.

Q. That is, small tractors?

A. Oh, yes, I would believe it would.

Q. Sure. But you don't know, I take it, anything about how particular dealers operate to serve their customer territory?

A. No; no, I don't. That's the dealer's own business.

Q. Come back to Exhibit 23 and take the first one, The Dalles, you have in the last column a list of stations, beginning with Maupin and extending down to Tuskan, which according to your footnote are located on the Oregon Trunk. You don't know, do you, anything about the size

of those communities or what business a dealer has at those points?

A. No, sir.

Q. Do you know as a fact that the Oregon Trunk runs to the canyon of the Deschutes River, to the major port of [fol. 2477] its length?

A. No, sir, I do not.

Q. Do you know, for instance, take a station like Oakbrook, is there any facility for unloading freight cars at Oakbrook?

A. I know nothing about the station of Oakbrook.

Q. You couldn't tell us where any one of those stations, that is, whether there are facilities for unloading carload freight, could you?

A. I think you would have to amplify the point of what the facilities consist of, because if there is a possibility of setting a carload of freight out at a siding at any of these towns, which I presume they would be available, the customer will get that freight off the cars. Now, what constitutes facilities is a different matter.

Q. That is the point I am coming to. Can you tell us at any one of these stations whether there is or isn't a side track?

A. No, I can't but I certainly would presume there was.

Q. What?

A. I certainly would presume there was.

Q. All right, at Oakbrook, for instance?

A. I would presume there was.

Q. You presume, do you know anything about it?

A. I would think it would be a pretty poor railroad that wouldn't put in a side track.

Q. Do you know whether Oakbrook is any more than a [fol. 2478] signboard in Deschutes Canyon?

A. No, I don't.

Q. You don't know anything about that?

A. No.

Q. If the city of Oakbrook is a white signboard in Deschutes Canyon you wouldn't consider it poor railroading if the Oregon Truck didn't have a side track there, would you?

A. Well, you are getting down to such a fine point and

all that about railroading. I would still think that it is a poor railroad if they don't have a siding. I do know of carloads of freight being unloaded on side track, on branch lines where sidings do not exist, where it can be set out by a way freight and picked up again on another movement.

Q. Do you know whether that is possible on the Oregon Truck—

A. (Interrupting) No, I don't.

Q. (Continuing) —considering the density of traffic on that line?

A. No, sir.

Q. Do you know the Oregon Trunk is a part of the line of the Oregon Truck and Electric, do you know, through the Beaver route?

A. I think you are helping me on the questions you just previously asked me. I don't know, though, by way of answering that question.

Q. Could you state for any one of these points listed in [fol. 2479] these S. P. and S. Systems served whether J. I. Case Company or any dealer of the J. I. Case Company has ever delivered a carload or part carload of freight from the time of the beginning of the building of the S. P. and S.?

A. I can't give you an exhibit record of that but I would certainly answer your question in the affirmative.

Q. At least you guess?

A. I believe that is correct.

Q. You think probably?

Mr. Maguire: He stated—

A. (Interrupting) Possibly.

By Mr. Rockwood:

Q. Possibly?

Mr. Maguire: I think this comes close to badgering the witness. Counsel has asked him a lot of argumentative questions and now he is just, figuratively speaking, chasing him around. I think he has gone far enough.

Exam. Dishman: Let's don't argue with the witness.

By Mr. Rockwood:

Q. Do you know as a matter of your own knowledge whether any carload of freight of J. I. Case material was ever unloaded at any single one of these stations listed in the second column of your Exhibit 23? Do you know?

A. Directly I will have to answer you no, I do not know.

Q. That is what I assumed.

A. We have been in business in that territory a long time and certainly we are not staying in business in that [fol. 2480] territory without obtaining and conducting some business.

Q. And your dealers, for the most part, you know use truck to distribute their product, do they not, rather than rail?

Mr. Maguire: That was not the witness's answer.

Mr. Rockwood: That is a question.

Exam. Dishman: Do you know, Mr. Bowman?

A. I would presume that would be the way of conducting the business today but I can't answer it directly.

By Mr. Rockwood:

Q. Do you know where Hillsboro is located on the Oregon Electric, what line it is on?

A. No.

Q. You have shown there that Vernonia is in the dealer territory of Hillsboro. Have you any notion what the rail route would have to be to get a shipment from Hillsboro to Vernonia by rail?

A. No, I couldn't answer that.

Q. Do you know where Vernonia is?

A. No, sir, I don't.

Q. Have you any notion what the cross-country distance is by highway from Hillsboro to Vernonia as compared to the rail distance?

A. No, sir.

Q. Whether it is shorter or longer or anything about it, you don't know?

A. I know nothing about the location.

[fol. 2481] Q. What is the significance of including the station of Vernonia as a point served out of your Hillsboro dealer's place of business? Why did you include that?

A. Because in making the inquiry relative to these dealers and of points and places they serve, our Portland, Oregon, branch specified that the dealer at Hillsboro serves this point of Vernonia.

Q. When did you inquire of the Portland branch for that information, when?

A. Previous to the Chicago hearing.

Q. When did you get this letter to which you refer? What is the date of that letter? I am not asking you to read it. What is the date of the letter?

A. Let me see if I've got that in here. The date of that letter submitting that list is December 1.

Q. Which was after the Chicago hearing?

A. Yes, sir.

Exam. Dishman: 1954.

By Mr. Rockwood:

Q. So that you did not have that letter prior to the Chicago hearing, is that correct?

A. No, I didn't have it. I recollect our testimony, and our questioning testimony, and you asked about this, and you were very specific about the point of the number of dealers involved, and I couldn't answer you at the time and then you asked if it was possible to get that information.

[fol. 2482] Q. You have read this transcript of your testimony. Will you point to any place in the record where I requested this information included in your S. P. and S. System stations in dealer service territory being the second main column in Exhibit 23, did I ask for that information?

A. No, I can't come to that point. I haven't reviewed that testimony completely, and I can't come to that point.

Q. Well, you know I didn't ask for it, did I?

A. My recollection is that you did.

Q. Your recollection is that I asked for this information?

A. That is my recollection.

Q. All right, will you please find that in the transcript, that isn't very long.

Mr. Maguire: Mr. Bowman, just a moment.

The record will speak for itself, and I think if counsel wants to make any point of that, that can be argued in brief without harassing this witness over it.

Exam. Dishman: The witness doesn't have the record there in front of him—do you, you couldn't find—

Mr. Rockwood (interrupting): He has it in front of him.

Mr. Maguire: Yes, he has a copy of the record, I gave him a copy of the pages of his testimony.

I still say that is argumentative and could be covered in brief.

Exam. Dishman: I don't think we should belabor that point.

[fol. 2483] Proceed.

By Mr. Rockwood:

Q. Did you submit to Mr. Maguire following the Chicago hearing a statement different in content than this Exhibit 23?

A. No, I didn't.

Q. Did Mr. Maguire return to you something that you sent to him with the request that you amend it or change it?

A. Wait, I will answer your first question again.

I did submit a statement that had a few additional points in that statement that was revised.

Q. Do you have a copy of that statement as you submitted it?

A. Yes, sir, I have it right here.

Q. May I see it, please?

Mr. Maguire: Just a moment. What is the purpose of that?

Mr. Rockwood: The general purpose of it, Mr. Examiner, is to show this was not supplied in any response of any request made by me and it was redirect examination and the form of the examination supplied was to a degree dictated by Mr. Maguire and not by any cross-examination of this witness on the witness stand.

Mr. Maguire: It is certainly well established here that Mr. Rockwood asked for part of this information and that I asked that the exhibit be expanded to include the rest of it. There is no question about that, that is what I read from the record this morning. To try to put any insulting insinuation [fol. 2484] on the thing I think is entirely out of place, that I coached the witness, or anything of the kind.

Mr. Rockwood: Maybe I misunderstand. As I gather from what the witness said after the conclusion of the Chicago hearing he submitted something to you and you asked to have it supplemented and changed and modified.

Mr. Maguire: Yes, I asked to have it supplemented, changed and modified by asking to have the names of the dealers which he did not have and some points involved which I asked him to strike.

Mr. Rockwood: May I see the matter first submitted?

Mr. Maguire: I don't think that has any place in this at all. I think it is a fishing expedition and has no bearing whatever, the facts speak for themselves.

Exam. Dishman: Inasmuch as he doesn't want to make it available he won't be directed to, of course.

By Mr. Rockwood:

Q. The fact is, Mr. Bowman, the form of this Exhibit 23 was dictated to a degree by Mr. Maguire?

A. No.

Q. It was changed after he had returned your first statement with some suggestions for change, was it not?

Mr. Maguire: Why, certainly it was. I don't make any bones about that, Mr. Examiner. I don't see why that should be belabored with this witness.

Exam. Dishman: Yes, that is already in the record.

[fol. 2485] By Mr. Rockwood:

Q. The second of your two exhibits are Exhibits 24 and 25, the first one being a copy of a shipping order from Bettendorf, Iowa, consigned to Clatskanie, Oregon, route is M.St.P. and P., S. P. and S., with directions to stop at St. Maries, Idaho, and Portland, Oregon. Exhibit 25 relates to that same car, does it not?

A. Yes, sir.

Q. And that is your diversion order which is dated June 28, three days after the date of the shipping order, to divert that car from destination Clatskanie to destination Portland with stop at St. Maries, Idaho, with the route changed to Milwaukee, Union Pacific, that is correct, is it not?

A. That's exactly as it shows right here on this diversion order.

Q. The through route from Bettendorf, Iowa, via the Milwaukee with a stop at St. Maries, did not apply to Clatskanie, Oregon, did it?

A. No, sir.

Q. There was no through route from Bettendorf to Clatskanie, Oregon, on the S. P. and S. with a stop for partial unloading at St. Maries, that is correct, isn't it?

A. That's correct.

Q. Isn't this the fact, that your shipping clerk or the official in your department in charge of this simply made a mistake and billed via the Milwaukee, S. P. and S., and a day [fol. 2486] or so later discovered his mistake and diverted to route Milwaukee, Union Pacific, over which there was a through route to Portland, isn't that right?

A. No, that isn't correct, because this order was changed by Portland, Oregon, as I understand this letter, although the letter is addressed to the agent, Gorman agent, Milwaukee Railroad, at Bettendorf, Iowa. On whose instructions that was issued, I don't know. I would presume it came out of our Portland branch to our Bettendorf branch.

Q. It was changed by the Portland branch. Well, then, it was the Portland branch that discovered the mistake that the through route did not apply to Clatskanie, is that right?

A. I wouldn't be able to tell you that it was a mistake that was discovered. It was a desire to make a change.

Q. All right, and the through route did apply to Portland?

A. The through route for the diverted shipment did not apply through Portland, or to Portland.

Q. To Portland?

A. To Portland.

Q. In the diverted shipment Clatskanie was entirely eliminated and the final destination was Portland, isn't it?

A. The route was M.St.P. and P. and U. P. with a stop at St. Maries.

Q. And the through rate would apply over that route?

A. Yes.

Q. Whereas the through rate did not apply as the ship-
[fol. 2487] ment was originally billed to Clatskanie?

A. Yes.

Q. And wouldn't you consider that a mistake in your billing department and whoever discovered the mistake the routing was changed so they would get the benefit of the through rate?

A. I wouldn't believe that would be the situation. I would believe it was the desire to have that shipment moved as originally billed.

Q. Where?

A. Consigned to the George Poysky Implement Company, at Clatskanie, Oregon, with a stop at St. Maries and a stop at Portland.

Q. Is it your practice to bill cars for movement over a route where there is no through rate applying?

A. It isn't a practice. Sometimes it just happens without proper checking of the route record for the—

Q. (Interrupting) It just happened here without a proper checking of the route?

A. Yes.

Q. In other words, I characterize it as a mistake. You may object to my language. But isn't that just about what happened here?

Mr. Maguire: I think the witness has explained what happened.

Exam. Dishman: You can't explain any more about this
[fol. 2488] shipment, can you?

The Witness: I can't say whether it is a mistake or an intention. It is certainly apparent from the shipping order and the first part of this record and the diversion that it was the intention to stop that shipment at St. Maries, which is a point in Idaho and which is a point on the Milwaukee Railroad.

By Mr. Rockwood:

Q. Why, certainly, and that wasn't changed, because in the diversion it was still to stop at St. Maries?.

A. That is right, and it became necessary to make that change, that is right, it is very apparent from that diversion order.

Q. The change was necessary in order to get the benefit of the through rate, isn't that right?

A. Well, I would presume that was a part of the intention all right.

Q. Isn't that simply an example where through inadvertence or otherwise your general practice which you described at Chicago of matching up shipments in carloads to get the benefit of the through rate just wouldn't follow for some reason or other?

A. That appears to be correct.

Q. Somebody slipped?

A. Somebody slipped.

Mr. Rockwood: That is all.

Redirect examination.

By Mr. Maguire:

Q. Mr. Bowman, let's start and work backwards on this cross-examination you started on here. Let's refer to Ex- [fol. 2489] hibit 25. The way that shipment originated according to the exhibit seems to be that the final destination was to be Clatskanie with stops for partial unloading at St. Maries, Idaho, and at Portland, is that correct?

A. That is the shipping order of the bill of lading shows.

Q. According to the heading under Exhibit 25, "Please make the following changes", it was diverted to a different route, Milwaukee-Union Pacific, rather than Milwaukee-S. P. and S., the final destination was shown to be Portland, with a stop for partial unloading at St. Maries, do I interpret that correctly?

A. That is correct.

Q. Now, what actually happened to this shipment? Was there any part of it that was reshipped or that was left over from the delivery at Portland?

A. I recollect we covered that at the last hearing, and it strikes me without having reviewed this record that that shipment failed to be stopped in transit but moved as originally routed.

Q. Do you have any file on that as to what was done with the balance of the shipment which was originally intended to the Poysky Implement Company at Clatskanie?

A. Just a moment, sir. Our Portland assistant branch manager said in a letter dated July 29—

Mr. Rockwood (interrupting): Just a moment before you [fol. 2490] read, may I see the letter before it is read into the record?

The Witness: Yes, sir.

Mr. Rockwood: Will you bear with me while I read this?

Mr. Maguire: Surely.

May I interrupt you just a minute and go back on the record for just a moment.

By Mr. Maguire:

Q. Was it your intention to read the entire letter or just simply refresh your memory as to the disposition of the balance of the shipment?

A. To refresh my memory as to the balance of the shipment.

Mr. Maguire: All right.

Mr. Rockwood: Thank you.

By Mr. Maguire:

Q. Do you know whether that entire balance of the shipment after unloading, partial unloading at St. Maries, finally terminated in Portland or whether it moved on beyond to Clatskanie, part of it?

A. In this letter dated July 29, 1954, our assistant manager at Portland says in view of this, meaning that the rates did not apply by the route the shipment moved. He said we were not allowed a through rate from Portland to Clatskanie, consequently we had to rebill from Portland to Clatskanie, with one combine on the car, and that resulted in an additional cost to the dealer of approximately $64.

So it is very apparent that shipment did move on to Clatskanie.

Q. Yes, a portion of it did?

[fol. 2491] Mr. Rockwood: What was that additional cost to Mr. Poysky, how much?

The Witness: $64 is what he says here.

By Mr. Maguire:

Q. With regard to your distribution out of or through your Portland agency, is your Portland agency a branch or an instrumentality of the J. I. Case Company?

A. It is a branch office.

Q. Yes?

A. Branch sales office of the J. I. Case Company.

Q. And you do have some storage facilities there, I think you said?

A. Yes, sir.

Q. Do all of the shipments which are ordered by the dealers throughout the territory come to rest in the warehouse at Portland or do they ordinarily move according to the billing instructions of your Portland branch and by-pass the warehouse?

A. As far as coming to rest at the Portland warehouse is concerned, I would say that few shipments do that. Certain shipments, carload shipments, are consigned to the Portland branch and are diverted in transit, others are consigned to points in the territory.

Q. Yes?

A. Included in the area of the business of the Portland branch.

Q. Now we will look again at Exhibit No. 25. For example will you state whether or not a movement of this sort where [fol. 2492] part of the carload is unloaded by a dealer, I presume the Straubs Hardware Company, at St. Maries, Idaho, part goes to your Portland warehouse and part goes to another dealer somewhere else?

A. Yes.

Q. Is that the ordinary channel of movement?

A. That wouldn't be ordinary. It would be a possible, and it seems like it is a possible one in this particular case.

Q. When the dealer makes the sale, that is, a dealer out in the territory, does the shipment necessarily come into his office or warehouse or may it be ordered by him to be shipped to the point where his customer is?

Mr. Rockwood: Are you talking about the general great western part of the United States or are you talking about the dealers located along the S. P. and S.?

Mr. Maguire: We can say along in this particular territory in the Pacific Northwest.

Mr. Rockwood: I object to that on the grounds the witness hasn't shown sufficient familiarity with it. He doesn't know whether any car since 1909 has been handled.

Mr. Maguire: He said he couldn't point to any without recourse to his records. He said he couldn't point to any individual car.

Mr. Rockwood: No, he didn't so answer. I asked him if he could give a single instance when it happened, and he said I will have to honestly answer no.

[fol. 2493] Exam. Dishman: Let's see what the witness does know about it.

By Mr. Maguire:

Q. Mr. Bowman, did you tell him that you didn't know that there had been a single shipment on the S. P. and S., did you tell that to Mr. Rockwood?

A. I said my recollection, from my recollection, I couldn't answer that question. I don't recall in the answer here that I made a positive statement of that.

Q. What is the fact about that, would you have to look at your records to earmark any individual shipments?

A. That is correct.

Q. But from your general knowledge of the operations of your company can you say whether or not you have made shipments into S. P. and S. territory as part of your distribution territory?

A. Yes, sir, we have.

Q. Now to get back to the question that I asked before. When sales are made to dealers out in the Pacific Northwest, are they necessarily billed, the shipments billed, to

the dealer's place of business or may they be billed to the unloading point of his customers, whichever way he directs?

A. That is correct. The point that he desires to take delivery or the unloading point, as you state, and it can be either where he might be located, if a rail served, or be at another point of another railroad within the territory that is prescribed to him for his dealership operations.

[fol. 2494] Q. With regard to this question of the number of dealers, which was asked you at the Chicago hearing, can you tell us just upon what information your answers to Mr. Rockwood were based at that time, how you got that information?

A. In the first place I got it from our sales department in our general office at Racine, and having obtained that information, which I presumed at the time was specific and correct, I used it in the original hearing, later finding that there were not 26 dealers on the S. P. and S. Railroad or System, however, there were 26 or more points that were served by our dealers operating in those territories, we supplemented the statement to cover the points that we intended to make in the original statement.

Q. Do you have a map or anything of the kind by which you keep track of your dealers, or what?

A. Yes, sir, we do have maps of our dealerships, our branch offices, their certain territory, their dealerships in those territories, and we designate the different types of dealers by a different type of a tack, and it will tell the whole story of the dealer and his operations by those tacks.

Q. This first information that you got was that from counting a list of dealers or counting tacks?

Mr. Rockwood: If he knows.

Mr. Maguire: I know he knows.

A. By way of telephone inquiry to this assistant in the [fol. 2495] sales department, and his answer was in answer to that.

Mr. Maguire: That is all, thank you, Mr. Bowman, unless Mr. Rockwood has some more which he undoubtedly will.

Mr. Rockwood: Undoubtedly.

Recross examination.

By Mr. Rockwood:

Q. Was this a combine that finally got to Clatskanie, out of this car that we have been talking about? Was it a combine that finally got to Clatskanie?

A. That is what the letter says.

Q. If that combine had been loaded out of Bettendorf, Iowa—wait a minute, excuse me—yes, Bettendorf, Iowa, was the origin point—in a car with material for stop, unloading along the Great Northern or Northern Pacific, it could have been billed to Clatskanie at a through rate and the Poysky Implement Company wouldn't have had to pay the $64, would he?

A. I think that is quite correct.

Mr. Rockwood: That is all.

Further redirect examination.

By Mr. Maguire:

Q. Do you know if you had anything for partial unloading to the Great Northern at that time?

A. I would presume there was not.

Mr. Maguire: That is all.

Further recross examination.

By Mr. Rockwood:

Q. On what do you base that presumption?

A. The record of the shipment as it started and where it moved.

[fol. 2496] Q. Would you start a car over a movement where there is no through rate, as you did in this case, if you didn't do it by mistake?

A. Those kind of mistakes have happened and undoubtedly will happen in the future. It is not the intention of doing so.

Mr. Rockwood: That is all. Mr. Maguire will undoubtedly ask some more.

Mr. Maguire: Without a doubt.

Further redirect examination.

By Mr. Maguire:

Q. Mr. Bowman, do you have sales at all times so you can make up any kind of combination you want of loading or do you have to take what sales you have at the time and complete your loading arrangements out of the presently available sales?

A. That is the correct situation.

Q. Which one, the latter or the former?

A. The latter.

Mr. Maguire: That is all, thank you.

Mr. Rockwood: That is all.

Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: Off the record.

(Discussion off the record.)

[fol. 2497] Exam. Dishman: On the record.

We will take a short recess now.

(Short recess.)

Exam. Dishman: The hearing will now be resumed.

Mr. Rockwood: I will call Mr. Hancock.

B. V. HANCOCK was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you state for the record, Mr. Hancock, your name, your residence, and occupation?

A. B. V. Hancock, executive vice-president of the Cascades Plywood Corporation, Portland, Oregon.

Q. Where is the plant of Cascades Plywood Corporation located?

A. Just outside the city limits of Lebanon, Oregon.

Q. And Lebanon is on the branch line of the Oregon Electric known as the Santiam branch?

A. That is right.

Q. Do you have service of any other railroad other than the Oregon Electric?

A. Yes, sir, by the Southern Pacific.

Q. And the general offices of the company are where?

A. Portland, Oregon.

Q. Do you have any plant other than the Lebanon plant?

A. None other.

Q. How long have you been engaged in the forest prod- [fol. 2498] ucts business in the Pacific northwest, Mr. Hancock?

A. Since 1929.

Q. How long have you been with Cascades Plywood?

A. Since its inception in 1944.

Q. In what business is Cascades Plywood engaged, that is, in the manufacture of products or in the wholesaling of products manufactured by others?

A. Strictly manufacture.

Q. What are the products that you manufacture?

A. The principal product is Douglas fir plywood and we also make battery and separators and hard board.

Q. Hard board is a building material, is it?

A. It is a composite, broken down fiber pressed together and made into a board and used for various purposes.

Q. What is the sales method used by your company in the distribution of its product?

A. Our entire production of plywood is under contract of U. S. Plywood Corporation.

Q. United States Plywood Corporation?

A. That is right.

Q. In the routing of shipments from your plant at Lebanon what control or discretion or judgment is left with Cascades Plywood with respect to the routing of the shipments so sold?

A. Well, it would depend on where it is going, its final destination. We route it as far as Minnesota transfer on the [fol. 2499] northern lines and on the southern lines we just simply route it S. P. and let it stop there.

Q. Do you have a choice of routes to that extent?

A. Yes.

Mr. Maguire: Pardon me, could I get the southern routing again, Mr. Hancock?

The Witness: Southern Pacific.

Mr. Maguire: To where?

The Witness: Any place on their connecting lines.

Mr. Maguire: Oh, I see.

By Mr. Rockwood:

Q. In your business do you ever start a car out from your plant which is not sold before it starts?

A. Never.

Q. There has been a great deal of discussion in this record of the difference between the so-called transit cars which may leave a mill before the sale to the ultimate consumer is made and firm cars where the sale to the ultimate consumer is made before the car leaves the plant, as between transit cars and firm cars how would you characterize your business?

A. Ours is entirely firm.

Q. Expressed in carloads what is the approximate output of your plant at Lebanon in a year's period?

A. Of plywood about twenty-four hundred cars and separators seventy-five to a hundred cars, and as yet the hard board is so new we can't tell yet but approximately forty to fifty.

[fol. 2500] Q. When did you begin the production of hardwood?

A. Well, in the last three or four months.

Q. Do you expect the separator business to hold up at that level in the future?

A. No. I think the separator business is going to disappear.

Q. What's happened to the separator business?

A. Synthetics has taken it over.

Q. When you talk about a separator, what is a separator as you manufacture it?

A. A separator is a thin piece of wood which is used to insulate between the positive and negative plates of a battery.

Q. Storage battery?

A. Storage battery.

Q. And the wooden plates are being replaced by other materials?

A. That is right.

Q. After that you will be working with hardwood?

A. Yes, or some other plywood.

Q. Did you at my request prepare a statement showing the distribution of your product throughout the United States?

A. I did.

Mr. Rockwood: I ask that there be marked for identification as Exhibit No. 38 a three-page statement of the nature referred to by the witness.

(Defendant's Exhibit No. 38, Witness Hancock, was marked for identification.)

[fol. 2501] By Mr. Rockwood:

Q. Do you have before you a copy of this exhibit which has been marked for identification as Exhibit No. 38, Mr. Hancock?

A. Yes, sir.

Q. Is this the statement that you referred to showing the distribution of your products by States of the United States and Puerto Rico and Canada?

A. Yes, during the year 1953.

Q. This, I notice, is expressed in number of square feet 3/8 inch plywood, is a standard unit of the industry?

A. That's a standard of the industry.

Q. And all of these percentages in the last column are percentages of the total footage?

A. That is right.

Q. And that is a true statement of your distribution in the year 1953?

A. Yes, sir.

Q. Are the '54 figures available yet?

A. No, and they would not be too good to take because we were on strike for two and a half months in '54.

Q. When was that strike?

A. It started in June and ended in August.

Q. That was the general lumber strike that has been talked about by others in this record?

A. That is right.

[fol. 2502] Q. And your plant was down completely?

A. Completely down during that time.

Q. Mr. Elam, traffic manager of the S. P. and S., offered in evidence when he was on the witness stand a map which has been marked as Exhibit 28. You have seen a copy of that map before, have you?

A. Yes, sir.

Q. I notice the Santiam as shown in the red line and the S. P. and S. system, the Milwaukee system, certain areas generally west of the Iowa, Nebraska, South Dakota line are in blue with some points in southwestern Minnesota and a few points in Nebraska and Missouri in blue, but most of them in South Dakota and west, do you do any business at points on the Milwaukee in that area designated in blue on that map?

A. I don't think so.

Q. I notice in your Exhibit No. 38 you don't show a single foot of plywood sold in the State of South Dakota. Is that generally representative of the extent of your business in the State of South Dakota?

A. That is right.

Q. And similarly for Montana west, this Exhibit 38 is representative of your general volume of business, is it?

A. Yes, sir.

Q. Again, as I see, there is none in Montana?

Mr. Maguire: Line 47, I think, will show it.

[fol. 2503] Mr. Rockwood: Excuse me, I overlooked it. That is quite correct, a small volume in the State of Montana, thank you.

Mr. Maguire: Pardon the interruption. You were talking about South Dakota only in your question, weren't you, about the Dakotas?

Mr. Rockwood: I referred only to South Dakota. There was a small volume in North Dakota. I was talking only about South Dakota.

By Mr. Rockwood:

Q. Out of your plant, if you use the Oregon Electric as the Oregon Railroad, what routes do you use to the major consuming markets as shown on your Exhibit 38 in the eastern portion of the United States?

A. Well, we simply route Oregon Electric, S. P. and S., either G. N. and N. P. to the transfer, and then after that it is designated by the consignee.

Q. And you use many connections beyond the Minnesota transfer?

A. That is right.

Q. You said you use the Southern Pacific. Have you ever shipped any shipments over the Southern Pacific-Union Pacific, via the Marengo route and the Milwaukee beyond the Marengo?

A. Occasionally, very seldom.

Q. Over the Southern Pacific do your shipments move Southern Pacific-Union Pacific to Omaha, do you ship over that route?

A. Oh, yes.

Q. Do you on occasion ship S. P. and S., Great Northern [fol. 2504] via the Beaver route, South California, and the southwest?

A. Yes, sir, especially during car shortage times we do.

Q. Do you use the route of the Northern Lines through the Laurel Gateway in Montana?

A. Yes, sir.

Q. All of these routes that I have described you customarily use some or all of them with some frequency?

A. Well, principally we move up over the Northern lines to Minnesota transfer or south over the S. P.

Q. In your business do you ever have occasion to start a car out with a partial load for completion of loading at another point before movement eastbound or southbound?

A. Very seldom.

Q. Where do you stop to complete loading?

A. Shasta.

Q. California?

A. California.

Mr. Maguire: I didn't get the name.

The Witness: Shasta. Anderson, California, really.

By Mr. Rockwood:

Q. Do you ever receive at your plant a carload partly loaded which you complete loading with plywood and then move on?

A. Occasionally.

Q. What is the source of cars so handled by you?

A. It might be from Foster, Oregon, Willamette Natural [fol. 2505] Lumber Company.

Q. That is the principal source of that type of business, is it?

A. Yes.

Q. And Foster, Oregon, is farther out towards the end of the Santiam branch?

A. That is right.

Q. In your business do you ever start a car out billed for part unloading at one point for complete unloading at another point on beyond?

A. Yes, sir.

Q. In what territory do you generally engage in that type of business?

A. Usually that is east of Chicago.

Q. Can you tell us whether there is any substantial volume west of Chicago?

A. No, practically none.

Q. I didn't ask you at the beginning, as executive vice-

president what jurisdiction do you have over the sales. Are you in charge of sales?

A. That is right.

Q. And under the sales department would come the routing of cars to the extent that your company controls the routing?

A. That is right.

Q. What has been the experience of your company in the matter of rejections of cars at the billed destination? Have [fol. 2506] you ever had that happen?

A. It has only occurred twice to my knowledge.

Q. Where were the points at which that occurred?

A. Well, one was in Southern Florida and the other one was in Chicago.

Q. On those two occasions was it necessary to rebill the shipment out for further rail shipment beyond the point of rejection?

A. No, sir.

Q. How was the car disposed of, how were these two cars disposed of?

A. The car in Chicago was simply switched to a warehouse, and the one in Florida, which had been half unloaded, was picked up by trucks.

Q. And those are the only two rejections that you have had in your experience?

A. That is right.

Q. And how long does that experience run back, to the inception of the company in 1944?

A. That is right.

Q. And you have been with the company continuously in this capacity generally since 1944?

A. Yes, sir.

Q. The Milwaukee in this case in its complaint asks that the S. P. and S., Oregon-Trunk and Oregon Electric, be required to join in through rates with Milwaukee via Spokane, [fol. 2507] eastbound and westbound on the same basis that the S. P. and S. lines now join with the Great Northern and Northern Pacific in through rate eastbound and westbound. Would the addition of the route as now requested by the Milwaukee in this case be of any advantage to your company in the marketing and distribution of its products?

A. No.

Q. Are the present routes that you have available adequate for all of your business?

A. Yes, sir.

Q. Would this Oregon route assist you in the solution of any problem with respect to stops to complete loading or stops to partially unload or for disposition of rejected cars?

A. No, sir.

Q. From what sources do you obtain your empty box cars for loading? I take it your product moves in box cars?

A. Yes, sir.

Q. And from what sources do you obtain empty box cars?

A. Both Oregon Electric and S. P.

Q. What has been your experience in the last several years with respect to your ability to get cars for loading on orders placed with the Oregon Electric?

A. We have had a complete record with them.

Q. Are there any types or kinds of cars which may be peculiar to your industry which you have had difficulty in obtaining?

[fol. 2508] A. Yes, we'd like more double door cars.

Q. Why do you want double door cars in the plywood industry?

A. So that they can be loaded with fork lifts, eliminate the hand loading.

Q. You can't use fork lifts for all lengths of plywood through a single door car, is that it?

A. No, sir.

Q. What has been your relative experience on the Oregon Electric and Southern Pacific in the matter of obtaining double door cars?

A. Well, we have had better success with the Oregon Electric.

Q. Is that matter of the demand for double door cars peculiar to your plant or otherwise?

A. No, that is quite universal throughout the industry.

Q. From your general knowledge of the industry is the matter of obtaining double door cars, as you described it, any different from that which is experienced by the industry generally in the Pacific northwest?

Mr. Maguire: If the witness knows.
Mr. Rockwood: If the witness knows.

A. I don't know that. I think that we have had—

Mr. Maguire (interrupting): Just a moment.
Mr. Rockwood: He is going to tell what he has had.
Mr. Maguire: No, he was saying what "I think".
Could I ask Mr. Hancock a very frank question?
Were you going to speculate on it or were you going to [fol. 2509] go off on some other topic?
The Witness: No, I was going to go on with the same topic.
Mr. Maguire: I think if the witness doesn't know from his own knowledge it ought to be limited.

By Mr. Rockwood:

Q. Just limit it to the experience of your own plant and the experience which you may have had or observed with respect to other plants.

Mr. Maguire: Just before that question is answered there, the witness has already said he does not know about conditions generally, and as to what happened in other plants, that would be hearsay entirely, and I think the witness should be restricted to the experience with his own plant.
Exam. Dishman: The witness should state just what he knows of his own knowledge.
Mr. Maguire: Not hearsay, Mr. Examiner, if I might suggest.
Exam. Dishman: That is right.

By Mr. Rockwood:

Q. Go ahead, Mr. Hancock.
A. What was the question again?
Q. The question was, I asked you a broader question than your own plant to begin with, what the experience was with respect to double door cars in the industry, the plywood industry, and on Mr. Maguire's objection I am confining you now to a statement of what you know from what you

observed yourself in the industry in this area, in your own plant in the industry, what you have observed yourself.
[fol. 2510] A. We have all of the cars that were available in that particular area that were double door cars, never up to our complete satisfaction, however, but sufficient cars of one kind or another, to take care of our traffic.

Q. Do you know to what extent the Oregon Electric has furnished cars as compared with other carriers in the northwest, do you know?

A. As far as our plant is concerned we know that they have done a better job than the other railroads.

Q. Than the Southern Pacific?

A. Yes.

Q. Which is the only other line serving your plant?

A. That's right.

Mr. Rockwood: You may cross-examine.

Cross examination.

By Mr. Maguire:

Q. Mr. Hancock, when you stated that, you say, we have all the available double door cars in the area, are you talking about your company now? You mean that the Cascades Plywood has been getting all the available double door cars in your area?

A. I mean all of those that are available to our plant, yes, that we could utilize.

Q. I would like to have you explain that term, all those that were available to your plant. You mean that you got all that they'd give you or you got all there were?
[fol. 2511] A. No, we got all they give us.

Q. Oh, I see. I don't think that is a very debatable question, then, is it?

A. You don't get any more than that.

Q. Now I would like to have you explain a little more fully, if you will—of course your plywood tonnage is the overwhelming majority of your shipments, is it?

A. Yes, sir.

Q. And that is under contract to the United States Plywood Corporation. Now I am not going to ask you about

the terms of the contract or anything of that kind, you understand, but just what is the effect of it upon you, does the United States Plywood say they have a customer at a certain place, or do they say ship to us at a certain place, or we will dispose of it further, or just how is that handled?

A. There are two methods, one is that it goes to their own warehouses at certain points, or they have sold a direct car.

Q. And so you ship it to their customer?

A. That's right.

Q. In the latter case?

A. Yes.

Q. So Exhibit 38, which shows the distribution area, shows the number of square feet which were shipped to customers of the United States Plywood or to warehouses of the United States Plywood in these different states, is that correct?

[fol. 2512] A. That is right.

Q. Where are the main warehouses of your big customer, the Plywood Company?

A. Well, the main ones are in the east. New York, for instance, has one in the Bronx, one in Brooklyn, one in Newark, there is one in Long Island, there is one in Hartford, Connecticut, one in Boston, one in Albany, one in Rochester, one in Syracuse, one at Cleveland, one in Columbus, one in Cincinnati, one in Harrisburg, one in Pittsburgh, one in Philadelphia, a couple of big ones in Chicago, there is one here in St. Paul, there is one in Omaha, St. Louis, Dallas, Houston, New Orleans, Memphis, Louisville, Atlanta, Birmingham, Alabama, Columbia, South Carolina, High Point, North Carolina, Tampa, Florida, Jacksonville, Phoenix, Arizona, San Diego, Los Angeles, Glendale, Fresno, Sacramento, Oakland, San Francisco, Portland, Seattle, and Spokane.

Q. You have a remarkable memory, I want to compliment you.

A. That's fairly close.

Q. Then the plywood company has warehouses, I think it would be safe to say, all over the United States with the exception of some of the Dakotas, Montana, and some of the so-called intermountain states?

A. That's right.

Q. Isn't that about right?

A. Yes.

Q. When you ship to a warehouse, what is done with the [fol. 2513] plywood, when it is shipped direct to the warehouse, is it sold out of there?

A. Sold out of the warehouse.

Q. Judging from the number of warehouses and their wide spread geographic distribution, those warehouses are so placed that the plywood received by them at each warehouse can be disposed of within the reasonably immediate vicinity, isn't that true?

A. That is right.

Q. And I suppose a very, very large portion of that is trucked out?

A. I think so.

Q. That is, due to local distribution?

A. Yes.

Q. Judging from the large number of warehouses, I would guess, I wish you would confirm it, that probably the great majority of your shipments are to the U. S. Plywood Warehouses, aren't they?

A. I think that is orrect.

Q. Could you give me any idea as to about the percentage, the relative percentage of the plywood that is shipped direct to their warehouses and distributed and sold by them thereafter, and the plywood which is shipped direct by you to some of their customers on a firm sale basis?

A. Well, I think that would break down to about 75 per cent to the warehouses and 25 per cent direct.

Q. And, of course, your small sales in the Dakotas, Mon- [fol. 2514] tana, and the inter-mountain states, or a small amount of shipments, I should say, is very largely accounted for is that they don't have warehouses in there?

A. That is right.

Q. They don't do business in those states?

A. Well—

Q. (Interrupting) That is, they don't do much business?

A. That is right.

Q. And geographically speaking where are their retail

customers, or their customers, I should say, to whom you ship direct, where are they located?

A. They are in all of these small towns, also in the large cities, lumber dealers.

Q. Lumber dealers all over the United States would you say?

A. That is right.

Q. Then about 1,800 cars per year of your plywood output are shipped directly to warehouses of the United States Plywood Corporation?

A. I think that is approximately correct.

Q. That is, out of your 2,400?

A. Yes.

Q. And the remaining 600 cars are shipped all over the country on firm sales?

A. That is right.

Q. I notice that you never deal in transit cars.

[fol. 2515] A. No, sir.

Q. Can you tell me the reason for that?

A. Well, you haven't made a sale when you've got a transit car.

Q. You don't believe in that form of operation?

A. No.

Q. Is the transit operator something of your authority at times?

A. Quite so.

Q. Is it to the advantage, let's be just frankly selfish about it, because I am here from a selfish point as well, you might say, partly, at least, along with our more noble aims, but it is not to the advantage of your company to allow transit operators too wide a field of distribution, is it, because they just get in your hair more places, isn't that about it?

A. That is right.

Q. You started operations about 1944, as I recall?

A. That's when the Cascades Plywood Corporation was formed.

Q. Yes, I mean the Cascades Plywood Corporation.

A. The same operation was there previous to that.

Q. And you have been in the lumber business yourself, I presume, before that, weren't you?

A. I was with the Evans Products Company in Marshfield, Oregon, from 1929 until they built this plywood plant.

Q. And that Cascades Plywood Company is a lumber firm?

A. It is one of their products.

Q. And the so-called transit operator or transit broker [fol. 2516] has been in existence to a greater or less degree during your entire experience in the lumber business, hasn't he?

A. Yes.

Q. And he is on the increase at the present time, is he not?

A. So I hear.

Mr. Maguire: That is all I have.

Mr. Rockwood: I have nothing further.

Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: Mr. Rockwood, do you desire to offer the exhibit in evidence?

OFFER IN EVIDENCE

Mr. Rockwood: I offer the Exhibit No. 38 in evidence.

Mr. Maguire: No objection.

Exam. Dishman: Exhibit 38 is received in evidence.

(Defendant's Exhibit No. 38, Witness Hancock, was received in evidence.)

[fol. 2517] Mr. Torinus: May we be off the record, Mr. Examiner, for a few moments while this exhibit is distributed?

Exam. Dishman: Yes.

Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

L. M. MacPherson was sworn and testified as follows:

Direct examination.

By Mr. Torinus:

Q. Mr. MacPherson, will you state your name, residence and occupation?

A. L. M. MacPherson, Traffic Manager, American Seating Company, Grand Rapids, Michigan.

Q. Will you state briefly your traffic experience, Mr. MacPherson?

A. My employment has been with the American Seating Company since 1909.

Q. And how many years have you been engaged in traffic work?

A. That same period.

Q. In what business is the American Seating Company engaged?

A. The American Seating Company is a manufacturer of public seating products, consisting of school desks, theatre chairs, folding chairs, church pews and furniture, and transportation seating.

Q. Where is their principal place of business?

A. Grand Rapids, Michigan.

Q. They have a factory there, do they?

[fol. 2518] A. They do.

Q. That is their shipping point for these products you have mentioned?

A. It is.

Q. Do they have any other factories?

A. Yes, two other factories, one at Lowville, New York, one at St. Barnabe Nord, Quebec.

Q. What are they, veneer plants?

A. Plywood.

Q. The public seating products that you have described are shipped entirely from Grand Rapids, Michigan?

A. They are.

Q. Will you tell us whether or not, Mr. MacPherson, the American Seating Company is one of the larger producers of public seating in the United States? Well, is it the largest, do you know?

A. It is the largest exclusive manufacturer of public seating, including the products named.

Q. Over a period of years, Mr. MacPherson, has your company shipped these products to the States of Oregon and Washington?

A. They have.

Q. At my request have you prepared an exhibit which shows the shipments which have been made by the American Seating Company from Grand Rapids, Michigan, to destinations in Oregon and Washington for the period com-
[fol. 2519] mencing March 9, 1954, and ending March 18, 1955?

A. I have.

Q. That is the exhibit which has been identified, Exhibit 39, which has just been distributed, is that correct?

A. It is.

(Defendant's Exhibit No. 39, Witness MacPherson, was marked for identification.)

Q. Mr. MacPherson, does this exhibit show all of your shipments in that period of time to those two destination states?

A. It does.

Q. It shows both the straight cars and the stop-off cars in that period, is that correct?

A. It does.

Q. Does the American Seating Company control the routing on these shipments?

A. It does.

Q. In what manner does your company sell its products, that is, through the method of direct sales to customers or through jobbers?

A. Both ways.

Q. Can you tell us offhand what proportion of your business is direct sale business and what proportion is sold through jobbers?

A. No, it is impossible for me to state that accurately.

Q. Do you have any jobbers in the Pacific Northwest, in
[fol. 2520] Oregon and Washington, to which you regularly make shipments?

A. We do.

Q. Where are those jobbers located?

A. Portland, Oregon.

Q. And do you have any jobbers in the intermediate territory in the States of Montana and Idaho, for example?

A. One in the State of Montana.

Q. Where is he located?

A. Great Falls, Montana.

Q. Now taking a look at your Exhibit 39, can you tell us how many shipments in all are shown on that exhibit?

A. Seventy carloads.

Q. Of that number how many represented shipments to Portland, Oregon, in final destination?

A. Thirteen.

Q. Is that correct, Mr. MacPherson? To Portland, Oregon, as a final—

A. (Interrupting) The total, I beg your pardon, that Portland was final destination, part of those was stop-off and part direct.

Q. The figure of 13 which you just gave me were the cars to Portland with final destination where there were no stops in transit, is that right?

A. That is correct.

Q. Of those 40 there were 13 straight cars to Portland [fol. 2521] and 27 stop-off cars, is that correct?

A. That is correct.

Q. I notice also on this exhibit that Portland is used as a stop-off point where shipments have moved on to other destinations.

A. That is correct.

Q. Do you know how many of those instances there are on your Exhibit 39?

A. Fifteen carloads.

Q. Is this exhibit which covers the period March 9, '54, to March 18, 1955, fairly typical of your method of doing business, your method of making shipments to these two destination states through the years, Mr. MacPherson?

A. It is.

Q. Do you have a market, fairly substantial market, in the State of Montana, for example?

A. We do.

Q. Do you also have some straight cars to destinations in the State of Montana?

A. We do.

Q. You have not shown those on this exhibit but simply the cars so far as the State of Montana is concerned that were stopped en route on shipments destined to Washington and Oregon, is that right?

A. That is correct.

[fol. 2522] Q. Do you have a fairly regular market at points on the S. P. and S. Railroad, the Oregon Electric, and the Oregon Trunk?

A. We do.

Q. I notice here on Exhibit 39 you have shipments to certain common points, such as Eugene on the first page, which is a common point between the Oregon Electric and the Southern Pacific, where Southern Pacific delivery is indicated. What generally determines what carrier is used as a delivering line in your business?

A. The carrier which has the closest delivery at destinations to the building to which the shipment is to be delivered and unloaded, installed.

Q. In other words, when you sell school furniture, for example, do you sell that installed on the job, is that right?

A. We do.

Q. Is that true with the other products which are shipped from Grand Rapids, the other public seating items?

A. It is.

Q. In making shipments to this destination territory do you customarily use one route in preference to another or do you use a variety of routes?

A. We use a variety of routes.

Q. Have you ever used to destinations in the States of Oregon and Washington the route, Milwaukee Railroad west of Minneapolis transfer, Marengo, thence Union Pacific?

[fol. 2523] A. We have.

Q. Are some shipments over which that route, in connection with which that route has been used shown on your Exhibit 39?

A. They are.

Q. Mr. MacPherson, are the present routes on the commodities which you ship to destinations on the S. P. and S., Oregon Electric, and Oregon Trunk, sufficient for your needs in serving the customers located at points on those railroads?

A. They are.

Q. Is the service which your company obtains in connection with shipments to destinations on the S. P. and S. and its subsidiaries and in connection with the Great Northern and Northern Pacific satisfactory to your company?

A. It is.

Q. Would the establishment of an additional route to destinations on the S. P. and S., Oregon Electric, and Oregon Trunk, in connection with the product which your company sells answer any problems which you have encountered or would expect to encounter in shipping to destinations on these three lines?

A. It would not.

Q. Can you tell us, Mr. MacPherson, whether or not such an additional route via the Milwaukee would be necessary or desirable in any respect as far as your business is concerned?

A. It would not.

Mr. Torinus: You may cross-examine.

[fol. 2524] Cross examination.

By Mr. Maguire:

Q. Mr. MacPherson, I guess I was looking at your exhibit at the time you were telling just what the nature of your output was. I know it is public seating, and I know I also got it includes school furniture, school desks, et cetera.

A. School desks, folding tables, church chairs, church pews and furniture, and transportation seating.

Q. I see. Mr. Torinus asked you a question just a moment ago whether the present rates and routes via the railroads shown on the exhibit were sufficient to serve points on those railroads, and you answered that they were. Now, I gather from that, and I hope you will correct me if I am wrong, that all that means is that just simply that as to the pattern of

your business, which is shown here by Exhibit 39, that you were able to reach the final destinations of these particular shipments with the particular stop-offs shown there under the rates and routes then in effect?

A. We did, we were able to.

Q. And I have made a little count here through your exhibit and I find that so far as your business was concerned that you did not during the period covered by the exhibit make any sale at a point exclusively served by the S. P. and S., there may be one exception to that, and that may be Lamont, Washington. I am not too certain about that.

A. I am not able to answer that either. The record states [fol. 2525] where the shipment is made and I have no further comment to make.

Q. In the three out of the seventy cases here I notice that you did go over, make summaries of your exhibit, and in only three out of the seventy were the S. P. and S. given any routing at all. Have you checked on that?

A. No, I have not.

Q. Does the American Seating Company maintain any warehouses, branch warehouses?

A. We do.

Q. Where are they located so far as Oregon and Washington is concerned?

A. We do not maintain any in Oregon or Washington.

Q. Your business, I presume, is national in scope, is it not?

A. It is.

Q. And your warehouses are more to the east, then, where the heavier centers of population are, is that it?

A. Our warehouses are located at Syracuse, New York, Philadelphia, Pennsylvania, Atlanta, Georgia, Dallas, Texas, Los Angeles, California, and San Francisco, California.

Q. This is nothing to your discredit if I ask this, Mr. MacPherson, but were you approached by the representatives of either the Great Northern or Northern Pacific and asked whether you would testify in this case?

A. I was.

Q. And how long ago was that?

[fol. 2526] A. I could not answer that. Some time ago.

Q. And they gave you their version of what the Milwaukee, the relief the Milwaukee, was trying to get here, I presume?

A. Well, they informed me to some extent what you were after and what the case was about.

Mr. Maguire: That is all. Thank you, Mr. MacPherson.

Redirect examination.

By Mr. Torinus:

Q. I have one or two questions, Mr. MacPherson. Inadvertently I overlooked asking you to make certain typographical corrections on Exhibit No. 39 which you mentioned to me this morning, and I would like to ask you to make those now.

A. I will be very glad to.

Q. So they will appear correctly in the record.

A. Yes.

On Page 3, shipment of July 15 to Albany, Oregon, should include the Oregon Electric as the final delivery and carrier under the column "Routing".

On shipment of August 19 to Portland—

Q. (Interrupting) That is on the same page?

A. Same page. The intermediate routing should be BRC and C&NW.

Mr. Maguire: Just a moment there. There are two shipments of the 19th to Portland.

The Witness: The second one. Ontario is the stop-off, intermediate routing should be BRC and C&NW.

[fol. 2527] By Mr. Torinus:

Q. C. and O., B. R. and C., C. and N. W., and U. P.?

A. Yes.

On Page 4, on October 15, the town of John Day should be changed to Pendleton because John Day was the place for which the order was intended. Mr. Torinus, those are all the corrections which are to be made.

Mr. Torinus: That is all I have. Thank you, Mr. MacPherson.

OFFER IN EVIDENCE

I offer at this time Exhibit No. 39 in evidence.

Mr. Maguire: No objection.

Exam. Dishman: Exhibit No. 39 is received in evidence.

(Defendant's Exhibit No. 39, Witness MacPherson, was received in evidence.)

Exam. Dishman: And the witness is excused.

(Witness excused.)

Mr. Rockwood: Mr. Examiner, as I discussed with you at the recess and also Mr. Maguire at the recess, it would be very convenient for us to adjourn before the next series of witnesses, if it is convenient with the Examiner now to adjourn until 1:30 or 2 o'clock.

Mr. Maguire: That is agreeable.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

[fol. 2528] We will recess now for lunch and resume at 1:30 p.m.

(Whereupon, at 12 noon, a recess was taken until 1:30 p.m. of the same day.)

[fol. 2529] AFTERNOON SESSION 1:30 p.m.

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Rockwood: I will call Mr. Budd.

RALPH BUDD was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you please state your name, address and occupation for the record?

A. My name is Ralph Budd. I live at Santa Barbara, California. I am retired. I have no official business but am connected as a director with some concerns.

Q. You have previously had experience in the transportation industry, have you, Mr. Budd?

A. Yes.

Q. Will you tell us briefly what your experience has been?

A. Prior to 1909 I had been chief engineer of the Panama Railroad. I was employed in 1909 as a reconnaissance engineer for the Oregon Trunk Railway where I worked until in 1910 when I became connected with the Spokane, Portland and Seattle Railway, and was chief engineer there until the close of 1912, leaving the Spokane, Portland and Seattle, the Oregon Trunk and the Spokane Inland Empire. After that I came to St. Paul with the Great Northern and was assistant to the president, chief engineer and vice-president, and in 1919 became president of the Great Northern where I continued until the close of 1931. From 1932 [fol. 2530] to my retirement in 1949 I was president of the Burlington Railroad. After I retired from the Burlington the 1st of September 1949 I became chairman of the Chicago Transit and continued there until the end of June 1954.

Q. What opportunities have you had, Mr. Budd, to become familiar with the purposes of the Great Northern and Northern Pacific in making the investments which made possible the building of the S. P. and S. System?

A. While I was at Portland I was engaged in the engineering department, and in that capacity I had no particular authority over policies, although I knew a good deal about the purposes that were being carried out.

After I came to St. Paul in 1913 I was quite directly connected with capital expenditures, both of the Great Northern and of the S. P. and S., which was handled jointly with

the Northern Pacific, and that continued until about 1919 when I became president of the Great Northern and from that time on, of course, was responsible for policy making.

Q. Can you tell us what the purposes were of the Great Northern and Northern Pacific in making the investments which produced the S. P. and S. System?

Mr. Maguire; Just a moment. If the examiner please, I object to that question upon several grounds. One is that from Mr. Budd's qualifications it must necessarily be, his knowledge of the purposes must be, hearsay; in the second [fol. 2531] place, there must have been some sort of contract. If there was any contract between the Great Northern and the Northern Pacific who are the equal stockholders in the S. P. and S., this would be parole testimony which would be at variance with the terms themselves of the contract. In other words, the contract would speak for itself, and parole testimony, to explain purposes of the contract, would not be permissible because all prior negotiations would be merged in a written contract. In the third place, this would be a self-serving declaration of the intervenors in this case, and what the Commissioner is interested in is not what the stockholders of the S. P. and S. may have had in mind to determine the question of whether the S. P. and S. is under common operation, management or control with the two stockholder companies. It is stating conclusions rather than factual data, and I think that this testimony as to the operation of the S. P. and S. should be restricted purely to factual data and not to explanations of policies or negotiations between the two stockholding companies.

I object to any questioning along this line.

Mr. Rockwood: Mr. Examiner, in a case such as this it is necessary to show the history. I realize that the ultimate fact to be determined is the fact as it exists today as to whether or not there is common control within the meaning of Section 15 (4) of the Act but the historical background of the conception, the building, and the operation of the [fol. 2532] S. P. and S. System from the beginning is, I believe, material evidence to establish the fact today.

Now, if there is any contract I don't know of its existence. However, that may be. Whether there is a contract, the purposes of the parent lines in building are, as a matter

of fact, almost a matter of historical reputation. They have been discussed in periodicals, pamphlets and everything else, and as a matter of general reputation it is pretty well outside of the bounds of the hearsay rule.

I think that the evidence as background material to prove the elementary fact of management control at the present time is entirely relevant and competent.

Mr. Maguire: I would like to be heard further, Mr. Examiner, in reply to Mr. Rockwood.

Exam. Dishman: All right.

Mr. Maguire: I think it is rather unique to justify admission into the record of the case, to which the rules of evidence apply, the fact that in publications which are not governed by the rules of evidence, have no interest in the rules of evidence, hearsay, self-serving declarations and other matters which would not be admissible in a court of law, are printed and circulated, I don't believe that is any foundation for the admission of evidence which would be contrary to the rules of evidence.

Furthermore, the thing that I think concerns the Commis- [fol. 2533] sion in this case is not what the stockholders had in mind, it is what they did. Now, any factual statement as to what was actually done other than the policies or the motives would, of course, be clearly admissible as historical data. But I still submit, Mr. Examiner, that to permit this witness, and this gentleman is certainly eminently well qualified, to state motives, intentions and everything else from his vast familiarities with the entire system, still it is not admissible in a case of this sort. It is what was done rather than what people had in their minds because there is no way of checking, for anyone to check or to test what was had, what the intention was or what the thoughts were of the controlling officers, of the two supervising officers of the two stockholding companies.

Exam. Dishman: Could you limit your questions, Mr. Rockwood, to hat was actually done?

Mr. Rockwood: There will be, of course, a vast amount of testimony as to what was done.

The purposes and the inception of the S. P. and S., I think, are entirely pertinent. Of course we are hampered, Mr. James A. Hill is not alive. We have gone back to get

those who were nearest in point of time in actual experience, and Mr. Budd's own experience, as far as the S. P. and S. in determining policies, goes back to 1913.

Mr. Maguire: But Mr. Budd, according to his own statement in answer to counsel's question, was not in a position [fol. 2534] of authority on the S. P. and S. at the time the corporation was organized and at the time the construction was made and at the time it started into operation.

Mr. Rockwood: That is true.

Mr. Maguire: When I say position of authority, he was not in a policy making position, so any testimony he would have upon that line would necessarily be hearsay.

Exam. Dishman: Have you qualified the witness for laying a foundation for these questions—

Mr. Rockwood (interrupting): Within the limits of human life, Mr. Examiner.

Exam. Dishman: Well, at that time.

Mr. Rockwood: I am working under the disadvantage of not having anybody now alive who was there when the S. P. and S. was first conceived. Mr. Budd came in 1909 with the S. P. and S. and became associated at that time with men who were familiar with the purposes of the parent companies in the building of these lines.

I will say that we will have later examples of the carrying into effect of that purpose at the periods in which Mr. Budd was actively participating in the determination of policy. As to those he is going to tell the facts and the extent to which he personally participated.

Exam. Dishman: We want the facts now.

Mr. Rockwood: I don't know whether there is a man alive [fol. 2535] who could tell the facts as to what happened in 1905.

Mr. Maguire: I would say, Mr. Examiner, further that if Mr. Budd had been in a policy making position with either the S. P. and S. or the stockholding companies at that time, that would still be objectionable upon the ground that it would be a self-serving declaration.

The Commission is not interested any more than a court of law would be with what people had in their minds when they entered into arrangements. It was what was done that counts.

Exam. Dishman: What conclusions would you expect the Commission to draw from this information you are trying to elicit?

Mr. Rockwood: I will frame it in the nature of an offer of proof.

I will offer to prove that the purpose of the Northern lines and investment of the money to make possible the S. P. and S. System was not primarily that the S. P. and S. itself would be a profit making enterprise and that the basic purpose of the building of the S. P. and S. and the investment of funds was to create long-haul traffic for the two parent lines which would result in profit to the two parent lines. That was the purpose. They built this line, the S. P. and S., in order to get a profit for themselves and not to make a profit for the S. P. and S. in itself.

Mr. Maguire: I object to that offer of proof, Mr. Examiner, upon the grounds that I have already stated.

[fol. 2536] Mr. Rockwood: I will show, of course, by Mr. Budd, when he became policy maker, participating in making the policies, the continued making available to the S. P. and S. of money from the parent lines was a continuation of the initial policy, was a furtherance of the initial policy.

Mr. Maguire: I would have no objection so far as the supplemented offer of proof is concerned as to what was done by the stockholding lines, but as to the motive or the purpose I would still object to that upon the ground that it is a self-serving declaration and would state a conclusion which the Commission itself is faced with; and it furthermore would be objectionable upon that line.

Mr. Rockwood: It is a little difficult to see how a Commission is going to determine a fact as to a purpose unless a witness is permitted to state what the purpose was. It may be a purpose which in this case would result in a favorable conclusion to us, but in a personal injury case the plaintiff's witnesses will give statements favorable to the plaintiff, defendant's witnesses will give statements favorable to the defendant, and they are not objectionable as self-serving simply because it stands to build up their case. As I see it, that is what Mr. Maguire's objection is.

Mr. Maguire: No, that is not what I have in mind at all. The policy is only built up by conversation between inter-

ested parties, working in their own interest, and those are [fol. 2537] self-serving declarations. Now, of course, both parties are at entire liberty to submit factual testimony as to what was done and then the Commission may determine from that, together with any contracts which that party may see fit to offer, as to what the intent of the parties was and to whether or not that intent has been carried out to the extent or whether or not that intent affects the contentions of the intervenors and of the S. P. and S. under Section 15 (4) of the Act, but merely to say I wanted to do this or I told somebody else I was going to do that or somebody told me let's do this, those are self-serving declarations because they are water over the wheel of the stockholding companies.

Exam. Dishman: Well, let's go off the record for a minute. We have gotten a lot on the record already.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Rockwood:

Q. Mr. Budd, you were engaged immediately when you came to Portland, as you have said, as a reconnaissance engineer. In what areas did you conduct reconnaissances?

A. I made a reconnaissance for a line from Bend, Oregon, south to a point in the Feather River near Keddie, California, where the Western Pacific Railway was then being built. I made reconnaissances for other lines that would extend from Bend eastward and from points on that line eastward from Bend near Burns, Oregon, to the Feather River where the Western Pacific might be joined.

[fol. 2538] Q. In your work at that time did you have any directions from your superiors with respect to the character of the country and the nature of the traffic which might be tributary to that country?

A. I was instructed that—

Mr. Maguire (interrupting): Just a moment.

Pardon me, Mr. Budd. That "Just a moment" was directed to Mr. Rockwood rather than you. I wouldn't interrupt you that way.

I think, Mr. Examiner, that that question should be clarified because I can see that it gives the witness and almost invites the witness to go into a great deal of latitude on the same question of motives and intentions of the parties. The character of the traffic which is mentioned, for example, just opens the door to the very line of testimony to which I have objected before.

Now, I would make the further observation that a reconnaissance engineer, not being an engineer myself because I can speak with a greater air of omniscience than if I were one, but a reconnaissance engineer would be interested solely, as I conceive, in the physical nature of the traffic, not in the financial aspects of that traffic, and so long as the question is directed to be restricted to the physical nature of the traffic I would have no objection, but I think the other [fol. 2539] one is an invitation to Mr. Budd to flap his wings a little bit.

Exam. Dishman: Your question as framed calls for him to state what his instructions were, is that right?

Mr. Rockwood: That was it.

Exam. Dishman: You have no objection to that, I suppose?

Mr. Maguire: Also Mr. Rockwood called attention to the nature of the traffic. If the witness is instructed by the examiner that he is not to go into the questions of any instructions that bear upon the general policy but merely instructions in direct connection with the manner of line to be located to accommodate a certain physical nature of traffic I would move no objection to it, but, as I say, it opens the door.

Exam. Dishman: Could you state that first?

The Witness: I will try.

Exam. Dishman: And we will see after that.

A. From Bend to a point on the Feather River where we were to connect with the Western Pacific the line went through Klamath Falls, and I endeavored to locate a route that would have as favorable physical conditions as possible because I wanted a line that would become a part of a through route with the Western Pacific on the south and the Oregon Trunk on the north to handle through traffic as

well as local traffic. It was well known then, as it is now, that there was a vast amount of pine timber in the Klamath area. And the line that I reported on was the line that later was built and is now in operation.

[fol. 2540] The other line was an east and west line which was a much more ambitious undertaking. In fact, to extend the Burlington west from—

Mr. Maguire (interrupting): Just a moment, please. Pardon me, Mr. Budd.

I object, Mr. Examiner, and I move that all reference to general policies as to what railroads they would be extensions of be stricken from the witness's testimony. As to the physical nature of the traffic to be carried I have no objection.

Exam. Dishman: You were testifying, were you not, Mr. Budd, about the instructions given you?

The Witness: Well, I was carrying out the instructions when I did the work that I related here. I was instructed to get as favorable a line as was possible through that area.

Exam. Dishman: And the statements you made regarding connecting lines, did that pertain to the instructions that you were given?

The Witness: Yes, sir. The idea was to connect with the Western Pacific in the Feather Canyon so as to reach to San Francisco and so that the Western Pacific could send traffic north and down the Deschutes River to the Columbia.

Exam. Dishman: The witness's testimony will be allowed to stand.

Mr. Rockwood: We have not had a ruling, Mr. Examiner, on my initial question as to when I asked Mr. Budd to state [fol. 2541] what the purpose was in the investment by the Northern lines in the building of the S. P. and S. system. May I have a ruling?

Exam. Dishman I want to ask the witness a question along that line.

The information which you have regarding that was told you by your superiors? You learned that in conversation with your superiors at various times?

The Witness: That is right.

Exam. Dishman: My ruling is that that is hearsay and I will sustain the objection.

By Mr. Rockwood:

Q. Mr. Budd, during your service with the S. P. and S. and the Great Northern did you have the opportunity to learn the extent to which the S. P. and S. policies were subject to any control by the executives of the two parent lines?

A. I knew all the time that they were in complete control of the, the two northern lines were always in control, of the policies. They fixed the policies, made the policies.

Q. After you went to the Great Northern, to what extent did you participate in the making of such policies?

A. After I came to the Great Northern I was the Great Northern's representative and was put with the Northern Pacific's representative to pass on the S. P. and S. capital expenditures. I took part in the discussions and joined in the deci ions that were made as to what would be done.

[fol. 2542] Q. While you were with the Great Northern was supervision exercised to any extent with respect to matters other than capital expenditures?

A. The two northern lines always directed the policies of the operation, the standards of maintenance and the traffic policies, and those were always determined by the two northern lines.

Q. And while you were president of the Great Northern did your participation extend to corrections of supervision, to matters such as that?

A. Yes.

Q. How was the supervision of the officers of the S. P. and S. carried out by executives of the two parent lines?

A. The two parent lines, of course, both extend to the west coast and frequent trips were made by the officers of both parent lines over their western territories and on practically every such trip a personal contact would be made with the S. P. and S. officials and matters of policy were discussed, and then the usual practice was upon return to headquarters at St. Paul for the northern lines' representative who had been in Portland to discuss with the other one what had taken place. Sometimes if matters were urgent they were covered by telegrams but the conduct of the matters which concerned policies was always by the two northern lines. The alternative to what I have described would

be when the president of the S. P. and S. and officers would come to St. Paul for conferences.

[fol. 2543] Q. During this period, was this throughout, that is, until you left the Great Northern in 1932 to go to the Burlington, was there throughout that period a corporate president of the S. P. and S. with headquarters in Portland?

A. There was, yes.

Q. Can you tell us generally to what extent his authority was?

A. Well, his authority was to carry on the projects which were approved of or which he was directed to carry on by the presidents of the Great Northern and Northern Pacific. He had no other authority.

Q. Was there a board of directors of the S. P. and S. at that time, do you recall?

A. Yes, there was a board of directors.

Q. Did they function as a board or how did they function?

A. They hardly ever met. I don't recall any meetings at all where matters of policy were discussed or determined. There were meetings when it was necessary to adopt resolutions of the corporations to carry out certain actions that were necessary but they did not meet in the ordinary sense of a board meeting to deliberate and determine policy. That was done by the northern lines presidents, either alone or in company with the S. P. and S. president.

Q. How were instructions given of the nature that you have described from the parent line president to the S. P. and S. president?

[fol. 2544] A. They would be given in the form of a letter or telegram or sometimes verbally.

Q. And by whom would those be signed, do you recall, in your practice?

A. Well, they would be signed by the president of the Great Northern, president of the Northern Pacific. Before I was president I had authority to sign such orders and did.

Q. In your own name as vice-president or assistant to the president or in your name as president?

A. No; in my own name.

Q. To what extent were S. P. and S. practices discussed

by you in an executive capacity with subordinate officials of the Great Northern?

A. Northern Pacific?

Q. No, of the Great Northern, your own subordinates.

A. We always discussed matters of vital character with the heads of the departments; especially I should say, I would discuss with the traffic officers of the Great Northern matters which would concern traffic policies, and very often as a matter of fact the traffic officers of the Great Northern and Northern Pacific would get together and form a recommendation which they made to their respective presidents as to what the traffic policies should be on the S. P. and S.

Q. What happened after recommendations were made by the two presidents?

[fol. 2545] A. The directions would go to the S. P. and S. that those were the policies and they would be carried out by the president of the S. P. and S.

This line or these lines that made the S. P. and S. System, during my period as an executive of the Great Northern, were always handled as an extension of the two Northern lines, nothing else.

Mr. Maguire: Just a moment. Pardon me, Mr. Budd.

I move that be stricken as a conclusion of the witness as it is not based upon any factual basis.

Mr. Rockwood: I think the witness can expand—

Exam. Dishman (interrupting): What do you mean by extension of the two Northern lines?

The Witness: I mean that the two Northern lines between Spokane and Portland had the S. P. and S. and used the S. P. and S. as an extension of their own railroads to get a direct and a low grade line into Oregon, and that was the way in which I always regarded the S. P. and S. and I am sure my opposite member on the Northern Pacific did.

Exam. Dishman: Are you speaking about the period of time when you were president of the Northern Pacific?

The Witness: Great Northern.

Exam. Dishman: Or Great Northern?

The Witness: Yes, sir.

[fol. 2546] Mr. Maguire: Mr. Examiner, that is precisely the basis of my objections before. The Commission is not

interested in what the president of either of the stockholding companies may have had in mind. The Commission is interested in the legal effect of what those companies did and that's why I objected to this blanket statement of Mr. Budd's as a conclusion of the witness. He is in effect—testimony of that sort usurps the functions of the Commission to determine what the conclusions will be.

It may be interesting from a historical point of view, but how Mr. Budd regarded the line, the Commission can't make a finding under Section 15 (4) how the contention has been raised by the two stockholding companies. They can't make a finding based upon what Mr. Budd's conception of the S. P. and S. was. It was what was done with the S. P. and S. that counts.

Therefore, I move that all of that testimony starting from my last objection be stricken.

Exam. Dishman: You mean all the witness's testimony?

Mr. Maguire: No; all of his testimony concerning his opinion of what the S. P. and S. was or how he regarded the S. P. and S.

Mr. Rockwood: Mr. Budd was describing a method of carrying on business with the S. P. and S. He was stating facts. He used the analogy of a portion of his own line in describing the manner, the factual manner, in which the [fol. 2547] business of the S. P. and S. was conducted.

Mr. Maguire: Yes. In other words, Mr. Budd stated some facts and then he stated his conclusion to be drawn from those facts instead of leaving that to the Commission.

Exam. Dishman: I think there is enough on the record regarding that. The evidence will be allowed to stand for whatever weight the Commission may see fit to give it.

By Mr. Rockwood:

Q. During the period when you were responsible for making the policies with respect to the S. P. and S. were matters ever originated in the offices of the parent lines at St. Paul and then brought to the attention of the S. P. and S. officials rather than have them initiated by S. P. and S. officials and brought to your attention?

A. Yes. Many of the projects that were carried out through the S. P. and S. originated in the general offices

of the Great Northern and Northern Pacific and instructions were sent to the S. P. and S. officials as to what to do.

Q. Were there ever any occasions when instructions were so given out to the S. P. and S. officials without any consultation directly with the S. P. and S. officials?

A. Yes, there were.

Mr. Maguire: Pardon me. Could I have that question read?

(Question read.)

By Mr. Rockwood:

Q. Any prior consultation?

Mr. Maguire: I should think it would be.

[fol. 2548] Mr. Rockwood: You have the answer in the record?

The Reporter: The answer is "yes, there were".

By Mr. Rockwood:

Q. Generally, Mr. Budd, what was the scope of the subjects which were so considered by the Northern line executives with respect to the affairs of the S. P. and S.?

A. As to the projects that involved capital expenditures, they were very wide in scope. I could probably illustrate some of them.

Q. I will come to that in a moment.

A. It covers everything from capital expenditures, the projects of expansion, to traffic matters and operating matters, standards, fixing of standards.

Q. You have referred to capital expenditure matters which were initiated in St. Paul. Can you give us some examples of the improvements or capital expenditures which were so initiated in St. Paul as far as the S. P. and S.?

A. Yes, sir, I will cite some. A good example was the establishment of a steamship line to operate between the mouth of the Columbia River and San Francisco. That project was decided on in St. Paul by the Great Northern and Northern Pacific without any advice or counsel from

the S. P. and S. although the contracts were made with the S. P. and S. for the ships that were built. And the building of the facilities for handling the traffic which had to be at the mouth of the Columbia because these ships were too large to successfully navigate the Willamette without re-[fol. 2549] ducing speed too much. Those facilities for handling the traffic, passenger and other traffic, were conceived in St. Paul and the S. P. and S. instructed to build them at what you call Clatskanie near the mouth of the Columbia River. Those two ships, one called the Great Northern and one called the Northern Pacific, were put in operation before World War II.

Q. World War II?

A. Or World War I, I should say, I am sorry, and were quite successful in their operation until they were taken by the government for transports. They were very fast ships. They were used during World War I for transporting troops on the Atlantic. They never did re-enter that service.

Q. Of the S. P. and S.?

A. Of the S. P. and S.

Q. Do you have another example that you can give us of a major project involving capital expenditures?

A. When it was decided to extend the railroad south from Bend the decision was made about 1925 to build from Bend to Klamath Falls. That decision was made here in St. Paul after consultation and conferences between the heads of the Northern lines. I was very active in that matter.

The application for authority to build that line was in the name of the Oregon Trunk and that extension, which would have been an extension of the Oregon Trunk to Klamath Falls, was approved by the Commission, but at about that time the Northern Pacific decided that it didn't [fol. 2550] care to participate, so that particular extension of the system lines was carried on by the Great Northern and the Commission permitted the Oregon Trunk to assign to the Great Northern the right to build, and the Great Northern did build as Great Northern.

And also, with the approval of the Commission, contracts were entered into to give the Great Northern various forms of trackage rights that would enable it to get to Bend

where it could connect with its own single ownership and operate itself. That is a very striking example of a major project which was wholly conceived in St. Paul.

Q. You referred to contracts giving the Great Northern access to Bend. Were those contracts entered into after consultation with the Northern Pacific?

A. They were all carried on with the Northern Pacific. I handled those contracts myself with Mr. Donelley who was then president.

Q. Did any officials of the Oregon Trunk as such then participate in those negotiations?

A. They never did.

Q. The contracts, do you know whether the Oregon Trunk was a party to those contracts?

A. Yes, sir, the Oregon Trunk is a party to them.

Q. Can you give us another example of a substantial capital expenditure handled in a similar way?

[fol. 2551] A. Yes, sir. There comes to my mind what I call the Sweet Home line—I believe it is now called the Santiam branch—on the East side of the Willamette river. The Great Northern and Northern Pacific decided to extend the Oregon Electric into the timber in the vicinity of Sweet Home and through Lebanon from Albany. That project was worked out independently of the S. P. and S. organization and approved by the two Northern lines without any consultation on the part of the local officers.

Q. Is that line from Albany to Sweet Home, do you know, owned solely by the Oregon Electric?

A. No, it isn't. I was over that line several times before it was built and it seemed possible there to make a saving by getting trackage rights on the Southern Pacific, and shortly before I left the Great Northern in 1931 trackage rights were obtained and it was a joint operation.

Q. From Albany to how far out, do you recall?

A. Out to Lebanon.

Q. Those negotiations were carried on by you personally, you say, on behalf of the Oregon Electric?

A. They were directed by me personally and to some extent they were carried on by me personally. I think L. C. Gillman got in on those negotiations. Perhaps I should have said that both of the Northern lines main-

tained then, and I think still do, executive offices on the west coast, and rather frequently those western executives [fol. 2552] of the two Northern lines would handle matters for us. I think in this particular case that our western office at Seattle may have been in on the negotiations.

Q. What was Mr. Gillman's position with the Great Northern at that time?

A. Well, he was vice-president. I think at that time his title was Executive Vice-President.

Q. With headquarters at Seattle?

A. Seattle.

Q. And he, as you recall, conducted those traffic rights for the Southern Pacific?

A. Yes, he was down there more than once.

Q. So far as you recall, do you recall any officer of the S. P. and S. or Oregon Electric, as such, that participated in the negotiation of that joint track arrangement?

A. I don't think they had anything to do with it at all.

Q. What was there about the location of the Santiam branch that made it desirable so far as the Great Northern and Northern Pacific were concerned?

A. It was extended into a large heavy stand of timber and enabled the two Northern lines to tap that timber and enjoy traffic from it, long-haul traffic. That was the purpose, of course, of the line to Klamath Falls also. There was an extension of an electric line that was not doing very well that developed heavy traffic.

[fol. 2553] Q. Have you another example of the consideration of capital items by the Northern lines?

A. The purchase of timber in the area of Vernonia, which is west of Portland, and could be reached by an extension of United Railways, which was another subsidiary, is an example. There the purpose, of course, was to get into timber that would develop traffic, and the Vernonia mill was built by the Central Coal and Coke people and was a part of the plan. They agreed to put the mill in there and cut the timber if the timber could be made accessible to them, and that purchase was made and authorized entirely from St. Paul headquarters and negotiated here in St. Paul. A good many of the meetings, I

think more than half of them, were in the Northern Pacific office.

Q. Did the S. P. and S. officials have anything as such to do with that purchase?

A. They had nothing whatsoever to do with it.

Q. Do you remember who paid for the timber? Do you recall?

A. Well, I am not sure who paid for it. I think the title was taken in the Ruth Realty, which was a subsidiary to the real estate there.

Q. And is subsidiary of what company?

A. Of the S. P. and S.

Q. Why was the purchase of this timber in northwestern Oregon in the name of Ruth Realty Company, as you have described it, of interest to the two Northern lines?

[fol. 2554] A. Because it offered an opportunity to develop long-haul traffic for the two Northern lines. That was the whole purpose of the extension.

Q. You have described generally the communications between the Northern lines executives, principally the two presidents, and the S. P. and S. officials in Portland. How frequent were those communications? How frequent did questions come up relating to the S. P. and S. in St. Paul?

A. Well, I would have to estimate it, but you know these two offices in St. Paul are in the same building with just a wall separating them and I suspect that more than once a week there would be matters that we'd go across the wall and discuss with each other.

Q. That is, the two presidents?

A. Yes.

Q. Do you recall what the form of the instructions were as they emanated from St. Paul to the S. P. and S. officials? Were they formal documents or informal? Were they written, oral or what?

A. There would be letters. Very often the form would be—one president would write, or if he happened to be out on the road and talked to the president of the S. P. and S., might write a letter as to the discussion that was had there and say that he had conferred with the president of the other Northern line and he was authorized to say that they would be done. That would be a rather com-

[fol. 2555] mon way. I think very seldom did we sign joint letters.

Q. If instructions were sent out over your name as president of the Great Northern to the S. P. and S. officials was the Northern Pacific notified in any way of the fact of that letter—

A. (Interrupting) You are always given a copy of the letter, of course. There were times, I remember, when something would come up. One of the Northern line presidents would be on the road, he would confer with S. P. and S. people and say that he thought something ought to be done and would take it up with the other president. Then the other president would very often write a letter or telegram saying he concurred.

Mr. Rockwood: You may cross-examine.

Cross examination.

By Mr. Maguire:

Q. Mr. Budd, to go back to the earlier part of your testimony, which line was it that built from Bend to Klamath Falls?

A. The Great Northern.

Q. The Great Northern?

A. Yes, sir.

Q. The Oregon Trunk did not build that line, did it?

A. No, it didn't.

Q. But the Great Northern did secure running rights over what was then the joint line, the Deschutes Valley [fol. 2556] line from Wishram; over the Oregon Trunk of the Deschutes Railroad Company, did they not?

A. Yes.

Q. So the surveys and the instructions you were working under at the time you surveyed from Bend down to the Feather River Canyon afterwards bore fruit in the form of the extension of the Great Northern? That was a Great Northern activity rather than a S. P. and S. activity, was it not?

A. It finally became one. It was Oregon Trunk up to and through the hearing. It must have been about the close

of that I.C.C. hearing at Portland that the Northern Pacific decided not to join and so notified the Interstate Commerce Commission.

Mr. Rockwood: May I interrupt just a minute?

The Witness: Then the Great Northern took over.

Mr. Rockwood: In about what year was it that the Northern Pacific withdrew?

The Witness: I think it was about 1925 to 1927. I think we got the line finished in '27. I think it would be '25 that the application was before the I.C.C.

By Mr. Maguire:

Q. I wonder if I may refresh your memory about that, Mr. Budd.

A. Yes.

Q. I think I have a little independent memory of my own on that. Wasn't the matter up before the, that is, the extension down to Bieber, California, didn't that come up [fol. 2557] sometime before 1929 before the Interstate Commerce Commission?

A. Yes, that was the extension. I am talking about the one from Bend to Klamath Falls and then we stopped at Klamath Falls and then later, as you say, we went on from Klamath Falls to Bieber.

Q. The reason, of course, that neither the S. P. and S. nor the Oregon Trunk took any further part with respect to the extension from Bend down to Klamath Falls was that one of the companies didn't want to go along with it, that was the Northern Pacific?

A. Yes.

Q. And, of course, that has been the pattern of the management of the S. P. and S., has it not, that if both stockholders cannot agree, both of the parent companies, as they have been referred to by you and Mr. Rockwood, if they both cannot agree, if there is not unanimous agreement; then no action is taken so far as the S. P. and S. is concerned, it is left out of it?

A. That is correct. The two must agree to do something before anything is done.

Q. Sure. Neither one of the two stockholders in the face of opposition of the other can do anything with the S. P. and S., can it?

A. That is right. This line south of Bend became a single Northern line extension, in this case the Great Northern, while north of there it was a jointly owned extension. [fol. 2558] Q. Was it not also the custom between you, though you may not have come to a parting of the ways too often, such as was done in connection with the extension from Klamath Falls south, the Bieber extension?

A. Pardon me, the split came there between Bend and Klamath Falls. After that, of course, there was one one line at Klamath Falls.

Q. That is Great Northern?

A. And that was Great Northern.

Q. And then you, the Great Northern—

A. (Interrupting) Yes.

Q. (Continuing) —had to make its deal with the Oregon Trunk subject to whatever conditions the Northern Pacific also might have laid down? In other words, there had to be a three-way meeting of the minds?

A. No, just a two-way meeting; the Great Northern and Northern Pacific negotiated those joint contracts.

Q. Yes, but the Great Northern could not impose its will on the S. P. and S., it had to give in to the Northern Pacific?

A. The Great Northern and Northern Pacific talked about this case at the time the Great Northern took over from the Oregon Trunk. I will say that the Northern Pacific when it withdrew I thought was very generous, at least was very obliging in sitting down with us and realizing that if we had a line down there we must have a reasonable way of reaching it.

[fol. 2559] Q. Yes?

A. And I think we reached a very equitable agreement which the I.C.C. approved.

Q. I can tell from looking at the contract. However, it was necessary for there to be some give and take on both sides so far as the two Northern lines were concerned?

A. Well, as there always is when you deal with people.

Q. While that is one instance of where the two Northern lines did not see eye to eye as to the utilization or the operations of the S. P. and S., it was the unfailing practice, was it not, for an executive of one line before he issued any instructions on matters of general policy to the S. P. and S. to gain the concurrence of his opposite on the other hand?

A. It was.

Q. And if there had been any conflict in opinion neither one could have swayed the balance one way or the other so far as the S. P. and S. was concerned?

A. That is right. Until the two lines agreed, the two Northern lines, that something would be done nothing could be done.

Q. Then, of course, the Great Northern and Northern Pacific are very vigorous competitors in their own rights, are they not, except where they have common interest?

A. Yes, sir.

Q. They are not under common management, interest or control?

A. No, I wouldn't say so, at least not when I was there.

[fol. 2560] Q. No, and it hasn't changed since either.

Can you give me any information as what was done with regard to—you say you had general control of traffic policy, that is, the two Northern lines. What was the situation with regard to divisions on joint through rates between the S. P. and S. and either the Northern Pacific or the Great Northern? Were those negotiated or was it just laid out on the line by the Northern line in question and the S. P. and S. had to take whatever was given to it?

A. Well, they were handled by the traffic officer of the two Northern lines and I presume they dealt justly with the matter.

Q. In other words, neither one of them, of the Northern lines, was going to be directly or indirectly holding the sack on account of an excessive division given to the other Northern line?

A. That may be.

Q. That would be a rather blunt interpretation of the true facts, would it not?

A. I must say that I am not a traffic expert.

Q. Yes.

A. And these traffic matters were actually handled by the vice-presidents of the two Northern lines in practically all instances but ways then in conference with the presidents after they had agreed.

Q. Those are on general traffic policies?

[fol. 2561] A. Yes, sir.

Q. But I am pinpointing my question now—

A. (Interrupting) To divisions between the S. P. and S. and the Northern lines?

Q. And one of the Northern lines. Isn't it a fact that the S. P. and S. took an active part and still takes an active part in the negotiation of any such divisions?

A. I just can't answer.

Q. With regard to the details of the operation of the S. P. and S., train schedules, crew assignments and details of that sort, have they always been handled in detail by one or the other of the Northern lines or does the S. P. and S. have its own operating officer who takes care of details of that sort?

A. When I was on the S. P. and S. and when I was on the Great Northern the superintendent of the S. P. and S. handled those matters, very much like the division superintendent would.

Q. When you say that the two Northern lines sent direct instructions on operation, that was the general operating policies of the S. P. and S. that the two owners agreed upon, is that true?

A. Yes. Such matters, for example, as the maintenance standards of track and equipment and things of that kind. The S. P. and S. had no separate standards of its own for track structures. In some cases they used Great Northern rail sections and then in some cases later on they used the AREA.

[fol. 2562] Q. I think it has been brought out, has it not, Mr. Budd, that the stock ownership, as a matter of fact it is alleged in the Answer here that the stock ownership in the S. P. and S. is divided exactly fifty-fifty between the two northern lines?

A. Yes.

Q. The S. P. and S. at the present time has a general manager in charge of its operating activities, has it not?

A. I can't tell you much about the S. P. and S. operations.

Q. At the time that you ceased having contact with them was it still a general superintendent or did they have a general manager?

A. They had a general manager for quite a long time but I think at the time I left it was general superintendent. The authority was pretty much the same.

Q. Under the scheme of management and the necessary result of the respective stock ownerships in the S. P. and S. would it be possible for either one of the Northern lines to gain through the instrumentality of the S. P. and S. an advantage over the other Northern line or would your perfect unanimity of consent which is required prevent any such undue advantages?

A. I think there were times, whether they exist now or not I do not know, when one or the other might have gotten more out of the S. P. and S. than the other. For example, it's about one hundred forty miles between Spokane and Pasco. The building of the S. P. and S., among other things, gave the Northern Pacific, which has a line [fol. 2563] between Spokane and Pasco, gave them what amounted to an alternate line during those early S. P. and S. days when there was some congestion on the west coast. And for a number of years the Northern Pacific made good use of the S. P. and S. for handling its predominant eastbound tonnage over the S. P. and S. where the grades were very much lighter. I am not familiar with whether they do anything like that now or not. Neither am I familiar with how the thing works out as to whether the Great Northern gets an advantage by reason of the trackage rights it enjoys between Bend and Wishram.

Q. Whatever the results were one way or the other, so far as an advantage of one Northern line or the other is concerned, that advantage could not have been gained without the concurrence of the other Northern line, isn't that true?

A. That is right.

Q. And the mere fact there were some years, I believe, when you were still president of the Great Northern, weren't there some years when you were also president of the S. P. and S.?

A. No, I don't think so.

Q. That hadn't started in during your time with the Great Northern?

A. We had separate presidents.

Q. Yes, I believe Mr. Turner was the last separate president?

A. Mr. Turner was president while I was president.

Q. But from your familiarity with the entire setup, the [fol. 2564] mere fact that the president of one of the Northern lines happens to be the president of the S. P. and S. does not give his company any greater control over the S. P. and S. than it would have during the period that the president of the other line was also president of the S. P. and S., would it?

A. I think that is a fair conclusion. I think it was intended that there should be no advantage.

Q. In other words, it was intended all the way along, then, that neither of the owning companies should have any independent say about the S. P. and S. without the full concurrence of the other?

A. Are you willing to accept my intention now as to what was the—

Q. No, I am asking you about this intention.

A. We will go back to the thing you objected to before.

Q. Wait a minute now. If you are going to regard that as an invitation to open the door I will withdraw the question.

Mr. Maguire: I think that is all, Mr. Budd.

By Mr. Cockrum:

Q. Back during that period did the S. P. and S. make annual reports to the Interstate Commerce Commission?

A. I don't know.

Mr. Rockwood: That is all, Mr. Budd.

Thank you very much.

Exam. Dishman: The witness is excused.

(Witness excused.)

[fol. 2565] Exam. Dishman: We will take a short recess.

(Short recess.)

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Rockwood: I will call Mr. Charles A. Hart.

You have been sworn as a witness, have you not, Mr. Hart?

Mr. Hart: I have.

Mr. Rockwood: Mr. Examiner, I have one exhibit which will be—

Exam. Dishman (interrupting): It will be identified as Exhibit No. 40.

(Defendant's Exhibit No. 40, Witness Hart, was marked for identification.)

CHARLES A. HART was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Will you please state your name, address, and occupation for the record?

A. Charles A. Hart, Portland, Oregon, attorney-at-law, member of the firm Hart, Spencer, McCulloch, Rockwood & Davies. That firm was originally organized as Carey & Kerr.

Q. And what connection, if any, has that firm had with the Spokane, Portland and Seattle Railway Company and subsidiaries, the Oregon Electric and Oregon Trunk, and its parent companies, the Great Northern and Northern Pacific?

A. Since the time of the organization of the S. P. and S. [fol. 2566] the firm has functioned as its law department, from that time up to the present time. During the same period the firm has acted as either local or state attorneys for one or the other of the two parent lines.

Q. What has been your own personal connection with the S. P. and S. and subsidiaries?

A. I left the Northern Pacific law department in St. Paul in 1911 and went to Portland to join the Carey & Kerr organization, and from that time on I have been active in the handling of problems of the S. P. and S. system. My responsibilities have gradually increased so that for a good many years I have participated with the executives of the S. P. and S., department heads and executives, and the executives of the parent lines in administrative and executive matters as distinguished from strictly law work. I am now general counsel of the S. P. and S. system. I have been a member of its Board for the last twenty-two years, since the beginning of 1933, yes, and of the Board of the Oregon Electric and Oregon Trunk, and I was a member of the Oregon Electric Board between 1921 and 1930 and the Oregon Trunk Board from 1920 until 1928.

Q. To what extent has your time been given to railroad work, and generally what has been your participation in the affairs of the S. P. and S. in the last, say, twenty-five years?

A. Well, in the last twenty-five years I have handled a good deal of the law work, although other members of the [fol. 2567] firm have done more as time goes on, and I have been in an advisory position and participating at all times, in recent years at least, in these executive or administrative problems, either with contacts, often with contacts directly with the parent line officers and, of course, with the S. P. and S. local officers.

Q. Since the beginning of the operation of the S. P. and S., which I think this record will show was in about 1909, have there been any changes in the manner in which the S. P. and S. affairs have been managed?

A. Yes, there were three. The management program has passed through three phases between the organizational date and the present time. The first was from the time of organization to the end of 1933; the second from the beginning of 1933 to 1940; and from 1940 to the present time.

Q. You said the first extended to the end of 1933?

A. No; '32. If I said '33 I stand corrected. To the end of '32.

Q. Tell us the manner in which the S. P. and S. business was conducted in this first period you referred to, from the beginning of 1933.

Mr. Maguire: From the beginning of what date?

Mr. Rockwood: From the beginning of operation of the S. P. and S. up to 1933.

Mr. Maguire: I don't wish to be hypertechnical. Mr. Hart had no direct knowledge before 1911 at least. If you [fol. 2568] are going into the period after 1911 I would like to have the opportunity of examining Mr. Hart at this time to determine his qualification for some period after he reached Portland.

Mr. Rockwood: All right, Mr. Hart.

Mr. Maguire: If I may have that privilege at this time.

Mr. Rockwood: I will restrict your knowledge to the first phase of the business from 1911. We will allow Mr. Maguire to examine you as to what happened from 1911 to 1933.

Mr. Maguire: May I have that opportunity?

Mr. Rockwood: Yes. I am presenting it to you.

Exam. Dishman: Proceed, Mr. Maguire.

By Mr. Maguire:

Q. Mr. Hart, when you came to Portland Mr. James Kerr was then in active charge of the corporate matters of the S. P. and S., was he not?

A. I doubt if that's an accurate statement, Mr. Maguire.

Q. I mean so far as your firm was concerned.

A. No. He was giving a great deal of his time to the land grant. I think we were all active. Of course, I was just trying lawsuits at first but it was only a few years when I had to go beyond that.

Q. That is what I was getting at. You came out there originally as a trial lawyer, did you not?

A. I came out and started in trying cases, yes, that is quite true.

Q. And then could you tell us when it was that you grad- [fol. 2569] uated from trial work into that phase of the

practice which would deal with the policies and the corporate matters of the S. P. and S.? When did you begin to take an active part in that?

A. That is a very difficult question to answer, Mr. Maguire. I can recall my contacts with the early presidents, one in 1914, and then presently when we got into the Columbia Basin differential rate controversy, which was before the Commission for so many years, and then during the first World War when we had the government operation of the railroads and separate corporate organization, those matters I was involved in. I have no specific recollection of what I did or what I didn't do.

Q. What I am trying to get at, Mr. Hart, is this. Of course, there is a distinction. I have no doubt you have been told about matters dealing with the management of the S. P. and S. before you began to take an active part as a principal in those matters, and, of course, you being a lawyer you will understand why I would object to any testimony of that kind on the ground of hearsay. What I am trying to find out is when your personal participation and knowledge of the different phases of the management of the S. P. and S. commenced and then we can go from there.

A. I still find it very difficult to answer that because I didn't become a principal, to use your word. I did, however, have participation in fairly early years with the executives. [fol. 2570] When that first developed it is very difficult for me to say.

Q. When you say you first began having conferences or contacts with the executives do you mean which would give you a first-hand knowledge of the manner of the conduct of the affairs of the S. P. and S. in general?

A. I should say in the time tenure as president of L. C. Gillman, and even perhaps before him, but take Mr. Gillman's tenure which began, I think, in 1915 or '16 and continued until the federal operation—

Q. (Interrupting) I will give you a year better than that, Mr. Hart, 1914, according to my information.

A. He was president until the railroad administration time when he became regional director and Mr. Turner succeeded him to keep the corporations separate and then

Mr. Gillman returned as president after the termination of the railroad administration and continued as president for a year when he went back to St. Paul with the Great Northern.

Q. Then would it be fair to say that in answer to Mr. Rockwood's question as to your knowledge of the different phases of management of the S. P. and S. that your testimony commences with about the year 1914? Would that be correct?

A. That is the best assumption I can make, yes.

Mr. Maguire: All right.

With that understanding I am through.

Mr. Rockwood: All right. We will have to cut off five [fol. 2571] years instead of two.

By Mr. Rockwood:

Q. Mr. Hart, will you tell us how the affairs of the S. P. and S. were conducted in this first phase beginning at the time you have now stated that you participated in such matters up until the end of 1932?

A. There was a complete local corporate organization in Portland headed by the president with subordinate officers and their subordinates and those officers reporting to that president. So far as I could observe there was no clear understanding during the earlier part of this period commencing in 1914 as to the extent of the authority or the extent of the control by the parent lines. It is true, so far as I can see, that corporate formalities were observed at least in the election of board members and election of officers, but certainly there were constant indications of limitations of authority. The president was in charge of that local operation and carrying into effect policies determined by the executives of both parent lines. This local president was in no sense a figure head. He was in charge of that operation and carrying out decisions and policies which were given him by the parent line executives. That's as nearly as I can summarize it.

I think it's safe to say that he did not exercise authority, he did not make decisions in any matter of major importance, without instructions from the parent line executives.

Q. What in your observation in that period was the [fol. 2572] participation by the executives of the parent lines with respect to substantial capital expenditures?

A. In all such cases matters of that kind were determined by the parent line executives. In most instances those projects originated in St. Paul, although there may have been instances which I do not now recall of projects originating in the Portland organization and submitted to a parent line executive.

Q. Can you give us some examples of substantial projects which were so initiated and so carried out?

A. The first one that I know of was the steamship operation which Mr. Budd has discussed, and that was worked out completely from St. Paul. The S. P. and S. was directed to execute a contract for the construction of the two ships at a total cost of four and a half million dollars. Then in 1915 we organized—I say "we", I mean the S. P. and S.—a subsidiary, the Great Northern Steamship Company, with the S. P. and S. as the stockholder, and then the building contract with the builders was assigned to this steamship company but the S. P. and S. retaining the obligation to pay and in that way paying for the stock in the subsidiary. All of that was done pursuant to directions from St. Paul and without any Board action by the S. P. and S. Board. That steamship operation, I guess Mr. Budd has explained, continued until the war and the vessels were taken over by the government.

Q. Have you another one in this period that you can refer to?

[fol. 2573] A. Well, there were many in this period, up to the end of 1932. Mr. Budd has given some of them. The extension of the Oregon Trunk from Bend to Klamath Falls is a conspicuous example. That project began in 1925, and the Oregon Trunk, we were directed to file an application with the Commission by the Oregon Trunk for authority to extend its line from Bend to Klamath Falls.

Q. You say "we", you mean your firm?

A. I mean the S. P. and S., we as a firm, law department of the S. P. and S. That application was the subject to sharp opposition by the Southern Pacific, and after hearing the Commission authorized the construction of a line.

Q. Granting the authority to—

A. (Interrupting) Granting the authority to the Oregon Trunk to build that extension.

Q. All right. What happened after that?

A. Shortly after that decision the Northern Pacific decided to withdraw and the Great Northern decided to go ahead as a Great Northern project, and then we were directed to make the necessary application to the Commission to substitute the Great Northern for the Oregon Trunk and to approve the operating contracts which the Oregon Trunk and the S. P. and S. were directed to make with the Great Northern so as to give the Great Northern trackage rights or, in the alternate, contract rates.

Mr. Maguire: Could I interrupt with a question just for [fol. 2574] clarification?

The Witness: Yes.

Mr. Maguire: When you say that "we" were directed, do you mean that your firm was directed or the S. P. and S.?

The Witness: I mean both, Mr. Maguire. It is hard to distinguish. I didn't get any directions from the S. P. and S. direct, as I can recall, but I was with them and I knew all about what directions had to come from—

Mr. Maguire (interrupting): Yes, but you were told that the Northern Pacific was pulling out of this arrangement. Did the Great Northern give you directions as their local attorneys in Oregon to take the necessary steps to substitute then?

The Witness: That is right.

The Commission in its decision in 1927, I think it was, '28, the Commission's decision approved both the substitution of the Great Northern for the S. P. and S. and the operating contracts I referred to which permitted the Great Northern to reach Portland or Vancouver, Washington, rather, either in its own operation under trackage rights or having the Oregon Trunk and the S. P. and S. conduct the operation but at contract rates rather than the tariff rates and similarly with the S. P. and S. so that they could reach Spokane.

By Mr. Rockwood:

Q. For the convenience of the parties do you have the decision of the Commission which granted the original Oregon Trunk application?

[fol. 2575] A. I do.

Q. What is that?

A. That is one eleven ICC, Page 3.

Q. Do you have the citation to the—

A. (Interrupting) May I add there that in that decision the Commission treated the project, and I quote, "as a Northern lines extension". You will find that on, oh, Page 3, Page 12, Page 45, and Page 53 and 111.

Mr. Maguire: Will it be understood, Mr. Rockwood, that both sides are to make reference to that decision?

Mr. Rockwood: Why, yes, of course, you can refer to it and we will.

Mr. Maguire: You will. Well, then I will reserve the same privilege. I don't want just a piecemeal interpretation by Mr. Hart.

Mr. Rockwood: Oh, of course not.

Exam. Dishman: Did you give the citation?

Mr. Maguire: He gave the citation.

The Witness: May I add, Mr. Maguire, when I said the Northern lines I was quoting, not interpreting.

Mr. Maguire: Yes.

A. The decision which substituted the Great Northern in 1927 is 138-ICC-99.

By Mr. Rockwood:

Q. Now, can you give us another example of such a project so handled?

[fol. 2576] A. May I add before we leave the Klamath Falls extension that it should be understood that the Great Northern did not build all the way through to Klamath Falls but built to a station called Chemult and then negotiated a joint use contract with the Southern Pacific for the rest of the line into Klamath Falls.

The next project I have reference to is the Lebanon-Sweet Home branch which Mr. Budd also referred to.

That was in 1928. I don't know that I need add anything to what Mr. Budd said about that except to give you the citation, 162-ICC-286, and to say that the Commission again—

Mr. Maguire (interrupting): Just a moment.

I object, Mr. Examiner, to the witness reading from a part or portion of the decision. I think the decision will speak for itself.

Exam. Dishman: Yes, the decision will speak for itself.

Mr. Maguire: And it is argumentative.

The Witness: All right.

Mr. Maguire: Just to tidy up the record I move his former comments or quotation stated from the decision in 111-ICC-3 be similarly stricken.

Mr. Rockwood: Mr. Examiner, the fact that Mr. Hart quoted those decisions wouldn't give it a bit more weight.

Mr. Maguire: It emphasizes certain phases of it which brings things out of focus.

Exam. Dishman: It may stand for whatever it may be worth.

[fol. 2577] Mr. Maguire: It won't stay out of focus. I will say that.

What is the citation?

The Witness: 162-ICC-286.

By Mr. Rockwood:

Q. Have you any other projects that you can refer to?

A. Another project which was authorized by the Commission was what we called the Sinslow extension. That was for a line running westerly from Eugene, Oregon, to reach lumber traffic at an estimated cost of a million two hundred thirty-one thousand dollars. The decision authorizing that extension was 170-ICC-313. That was February 12, 1931.

Q. Was that line ever built?

A. That line was not built. The project was given up because of the depression which was then developing or had developed.

Q. Have you another example of that nature?

A. Yes. In 1930 there was another Oregon Electric extension and acquisition proposed. That was the acquisition of the Valley & Siletz Railroad and the construction of a branch to connect the Oregon Electric with that. It involved an expensive bridge across the Willamette river and approximately two million dollars for the acquisition of this Valley & Siletz line. That was opposed by the Southern Pacific and the Commission ruled—if I may explain that much—that adequate service was already being provided by the Southern Pacific, so our application was denied.

[fol. 2578] Mr. Maguire: I will accept that.

By Mr. Rockwood:

Q. What was the citation of that decision?

A. 180-ICC-28.

Q. Have you another extension case before the Commission that you can refer to?

A. Yes. In 1932 an application was filed with the Commission for authority to extend the Oregon Electric branch which terminates at Forest Grove southerly a short distance to reach a large saw mill being constructed by the Stimson Lumber Company. That application was also opposed by the Southern Pacific but the Commission granted the application, granted authority, but the line was not built, for the same reasons that influenced them in giving up the Sinslow extension.

Exam. Dishman: What is the citation of that?

The Witness: That is 193-ICC-619.

By Mr. Rockwood:

Q. Mr. Budd mentioned some Ruth Realty timber. Are you familiar with that transaction?

A. Yes, I am.

Q. Will you tell us about that?

A. That was a project which originated in St. Paul, was negotiated in St. Paul. The S. P. and S. was given directions and it involved, with a second supplemental purchase, involved over two million dollars, and that resulted in the acquisition by Ruth Realty Company, a S. P. and S. sub-

sidiary, of this stand of timber which has been partly cut [fol. 2579] out, a small section of it still remaining in Ruth Realty ownership.

Q. I think we will have occasion to refer to that same timber later. What is the general location of that timber with respect to the lines of the S. P. and S.?

A. It is in the northwestern part of Oregon. It is westerly of Portland toward the coast, in the coast range. It is reached by a line extending directly westerly from a connection with the Astoria line of the S. P. and S. near Portland to a town called Vernonia where this lumber mill is in operation. The timber was reached by a rail line running out, from the mill.

Q. These projects which you have discussed, beginning with the steamship project and extending down through this last one you have discussed, what in general was the extent of the participation by the local S. P. and S. officials in those projects?

A. So far as I have been able to determine from my own recollection there was a very little participation, particularly in the 1920's when these Oregon Electric projects were developed and the Oregon Trunk. In earlier years and during the presidency of Mr. Gillman I would think there was more, there was more participation by him, although in that steamship matter I am confident it was worked out entirely in St. Paul, but there was much less authority, much less responsibility vested in the S. P. and S. president in the latter part of this period ending with the end of 1932 than there was in the earlier part.

[fol. 2580] Q. Do you have in your own office a copy of the minutes of the S. P. and S. Board?

A. Yes.

Q. Have you examined those records to determine the extent to which resolutions, if any, were adopted by the S. P. and S. Board with respect to these projects?

Mr. Maguire: Just a moment, please.

A. I can answer that without examination.

Mr. Maguire: I wish to object to that question on the ground that the minutes of the S. P. and S. are the best evidence. I don't care to accept obviously a partisan portion of

those minutes. I am not casting any reflection on Mr. Hart's good faith.

A person who is lined up on one side of the case I don't think should be permitted to give his interpretation of documents which may be examined and let the Commission make its own interpretation.

By Mr. Rockwood:

Q. Is there any corporate action in the minutes of the S. P. and S. with respect to these projects?

Mr. Maguire: Same objection. The minutes are the best evidence.

Exam. Dishman: Could you produce those?

Mr. Rockwood: Well, yes, but evidence of something that does not exist does not have to be proved by a document. We are saying it does not exist.

[fol. 2581] Mr. Maguire: As to the other people, parties to this case, to determine there is nothing which shows any particular result, there might be a difference of opinion about that. We are asked to accept a conclusion as to whether there was anything which would, in the minutes which would, justify these conclusions.

Mr. Rockwood: The statement I am going to make is not evidence, of course. Duplicate sets of those minutes are in St. Paul in the offices of the parent lines as well as a duplicate set in the office of Mr. Hart's firm as general counsel. We could produce a duplicate set. We couldn't produce the originals because they are not in St. Paul.

Mr. Maguire: I would raise no objection on the ground that they are duplicate sets.

Mr. Rockwood: I will be glad to make those minutes, a duplicate set from St. Paul, available for Mr. Maguire's examination. I am not going to offer the whole minute book in evidence. There is so much material in them with respect to election and direction of officers that is not material in this case, of course, but I will have a duplicate set brought up tomorrow for Mr. Maguire's examination.

Mr. Maguire: I would suggest, Mr. Examiner, then, that the examination of this witness upon that point be deferred until those duplicate sets are available.

Mr. Rockwood: I will defer an answer to this question [fol. 2582] that I just asked until we bring up the minutes.

By Mr. Rockwood:

Q. Mr. Hart, you referred to three phases and you described one. What was the second phase of S. P. and S. management which you said extended from 1933 to 1940?

A. In that period there was no complete local organization of the S. P. and S. Instead, in the first year, 1933, the president of the Northern Pacific became the president of the S. P. and S. and the Great Northern president became its vice-president. There was a superintendent in charge of operations but each department was directed, each S. P. and S, department was directed, to report to the corresponding department of the parent line whose president was S. P. and S. president in that year. At that time the two presidents of the parent lines, their two western vice-presidents and myself constituted the Board of Directors of the S. P. and S. and its subsidiaries. That began with the annual meeting at the end of '32 or the beginning of 1933. I should say that the operation then was substantially the same as the operation of a division of the parent line.

Mr. Maguire (interrupting): Just a minute. That is objected to as a conclusion. I think that the facts should be produced here and I move that comment be stricken.

Mr. Rockwood: If you will just be patient, Mr. Maguire. The fact he is trying to state does not detract from the fact that he is stating.

[fol. 2583] Mr. Maguire: Nevertheless, the statement by the witness that the president of the Northern Pacific became the president of the S. P. and S. and the Great Northern president became its vice president is a conclusion of the witness.

Exam. Dishman: That is a conclusion.

Mr. Maguire: That is a conclusion and I move that be stricken.

Exam. Dishman: It may be stricken.

A. Each department head reported, as I have said, to the head of the corresponding department of the parent line whose president was then president of the S. P. & S.,

and that went all the way down, including our own law department. We couldn't settle a claim, a personal injury claim, without getting the approval through our claim department of the general claim agent of the parent line whose president was then S. P. and S. president. Similarly the accounting, traffic, each department got its instructions from the corresponding; from the head of the corresponding, department of that parent line.

By Mr. Rockwood:

Q. What were the S. P. and S. officials locally at Portland?

A. There was a superintendent in charge of operations. I don't know that I can name them all. There was a comptroller at the head of the accounting department, a traffic manager at the head of the traffic, there was a general freight agent and general passenger agent, and so on down the line.

Q. Was there any official of the S. P. and S. in Portland [fol. 2584] that had general supervision over all of these department heads that you have described?

A. No, there was not.

Q. Where was the over-all control of these various department heads?

A. In St. Paul.

Q. You say that in one year reports were made to departments of one parent line whose president was president of the S. P. and S. In the succeeding year was that reversed or changed? What happened in the succeeding year?

A. The other line took over in the following year. In 1934 the Great Northern president was S. P. and S. president, and automatically each S. P. and S. department head reported to the Great Northern department head.

Q. And that alternated through the years?

A. That alternated through the years.

Q. What can you tell us as to the fact of the extent to which S. P. and S. affairs were under consideration by the company whose president was not the president in that year? In other words, did in 1933, for example, when the Northern Pacific president was president of the S. P. and S., did the Great Northern have anything to say about the S. P. and S.?

A. What I have spoken of had to do really with the current operations. There was, indeed, the same dual control by the two parent lines during this seven-year period. [fol. 2585] There were many instances of that in that period. That is, any matter of importance was determined by the two parent lines because the instructions came not necessarily from the president, from the parent line president, who was then S. P. and S. president, but from either one of them or both of them.

Q. Can you give us one or two examples of such what you have characterized as dual control in that period?

A. Well, the best example of the one I have or the one I am most familiar with was the long continued job of picking up Oregon Electric bonds which were in public ownership, and the interruption of that in order to get authority to extend the maturity of the bond issue. I began buying these bonds—or let me say first of all the Oregon Electric was originally a passenger line, an inter-urban passenger line, operating between Portland and Salem when it was acquired by the S. P. and S. in 1909 or 1910, 1910 I guess. There were in the hands of the public almost two million of bonds and some substantial holding of preferred stock. So at the direction of the parent line executives I began trying to buy those bonds, oh, in 1925 or '26 or '27, somewhere along there. I bought off and on when an opportunity offered until I was directed suddenly, by call or telegram from one of the presidents who was in New York, to discontinue all purchases. Nothing was done then until the maturity date of the bond issue which was in 1934 was approaching. I think I have that date right. May 1, 1933, [fol. 2586] was the maturity date of the bonds. As that date approached I was directed then to see what could be done toward getting the consent of the outstanding bond holders to an extension with a reduction of the rate of interest and providing we were willing then to have the S. P. and S. arrange for payment, so we arranged for the organization of a bond holders' committee with some well known citizens, and after much negotiations the thing was worked out and an application was made to the Interstate Commerce Commission for approval of the agreement for this extension, and that extension was granted by an order of the Commission, 224 ICC 229.

Then following that approval I was directed to continue trying to buy in the bonds as well as the outside holding of preferred stock. I continued and completed that job in 1951.

Q. In your handling of that job, Mr. Hart, did you receive instructions from any of the local organizations of the S. P. and S. as to what you were to do or did you receive direct instructions from some other source?

A. I received direct instructions from one or the other of the parent lines.

Q. Have you another example of what you characterize as dual control in that period, from 1933 to '40?

A. Yes, in 1934 the parent lines decided upon the construction by the S. P and S. of a grain elevator at Vancouver, Washington, on property leased from the Port of Vancouver. That elevator with subsequent addition has cost approximately a million and a half, and it included a [fol. 2587] lease to a milling company with headquarters in Minneapolis. That was all worked out in St. Paul without any participation by any S. P. and S. representative.

Mr. Maguire: Pardon me. For clarification, is that the Archer Daniels case?

The Witness: Yes, that is right.

By Mr. Rockwood:

Q. In response to some question by Mr. Maguire you made some comment on the Deschutes line and the Oregon Trunk in the Deschutes Canyon. When did that occur, do you recall?

A. Not until 1925. Mr. Maguire's question, I think, seemed to imply that there was that joint operation at the time of the Klamath Falls extension or the Great Northern extension or both of them. That is not the situation. At the time of those projects and up until 1935 there was very little joint operation between the Union Pacific subsidiary and the S. P. and S. subsidiary, going up the Deschutes Canyon to reach Bend. Each had its own line with a few exceptions where the physical situation would make the two lines utterly impossible.

In 1935 officers of the Great Northern and Northern Pacific in St. Paul conducted a negotiation with the Union

Pacific officers and worked out a program for a complete one-line railroad all the way from the Columbia River to Bend, and that involved the abandonment by the Union Pacific of, I think, approximately 75 miles of its line. That again was done, of course, without any participation whatsoever by any S. P. and S. representative.

[fol. 2588]

Q. Now, coming to what you characterize as the third phase, from 1940 to the present time, what has been the method of management used in that period?

A. At first, in 1940, there was not a very great change but there was the superintendent, the then superintendent, who was given the title of vice president. How much additional authority he got I never was able to determine because for a considerable time the different departments of the S. P. and S. continued to report to the parent line departments because the presidency of the S. P. and S. continued to alternate between the two parent line companies, and, oh, it took three or four years before that practice was fully given up. I don't think any instructions were given to the subject but presently when a change occurred in this position of vice president another man came in and was made vice president and general manager, and he began to exercise further authority in conducting the local operation. Gradually the department heads began to report to him and everything was routed through him to St. Paul rather than directly to the heads of the departments of the parent line. That has now developed, and at the present time the vice president in Portland, although he does not have the title of vice president and general manager, he is simply vice president, matters, all questions, S. P. and S. questions, which go to the parent line executives are routed through this vice president. And I think

[fol. 2589]

there is no—there was no definition or clear statement of his authority except that he was generally in charge as much perhaps as the head of a branch operation of a business that was country wide might have exercised but getting his instructions from the executives at the head offices. That, I am sure, is the present day practice, the vice president of the S. P. and S. does not act in any matter of importance without the authority or approval of the two presidents.

Q. Do you know whether there is any communication

today between departments of the S. P. and S. and corresponding departments of the present lines?

A. Oh, I am sure they keep in close contact with the heads of the corresponding departments, and many things may be settled in that way, but I think any matter of importance is submitted by the local vice president to one or the other of the parent-line presidents and instructions come in from them.

Q. For instance, as general counsel and active in what is, in fact, the legal department of the S. P. and S., do you have communications with the legal departments of the parent lines direct?

A. Oh, yes, constantly.

Q. Can you give us a few examples of the nature of the exercise of other parent lines of supervisory powers during this third phase, from 1940 on?

A. The first I think of is the annual budget covering [fol. 2590] improvements. I think the local organization prepares a budget in November of each year for the ensuing year and that is sent on to St. Paul, and frequently a representative of each of the lines will come to Portland to review the needs of the S. P. and S. and then reporting back to the heads of their departments; thereafter the parent-line presidents determine to what extent the budget shall be approved.

Q. Go ahead.

A. Then in all matters such as equipment purchases plans may originate in Portland for purchase of additional equipment or may be suggested or directed by the parent lines. The local organization, of course, is asked for its recommendation, but the decision is made by the parent line executives. Only recently, within a few years past, the S. P. and S. was directed to proceed with the purchase of dome cars for the use on the S. P. and S. between Portland and Pasco so as to go on on the Northern Pacific's North Coast Limited. And similarly the S. P. and S. has been directed to make purchases of dome cars it will have to use in its connection with the Great Northern's Empire Builder. Those cars mean an investment, I think of $250,000 or more. And those directions came from the parent line executives in St. Paul.

The car supply matter is handled through—any notice from the A.A.R. goes to the parent line president in St. Paul, who is S. P. and S. president at the time and direc-
[fol. 2591] tions are given by him or by his representative in the west.

Quite recently a step of importance was taken by the parent lines affecting the S. P. and S., and that was the cancellation of a very large amount of delinquent bond interest. The S. P. and S. has a bond issue outstanding on which it has been able to pay only a part of the long years accumulated interest. The parent lines determined in 1953, since there was no prospect of collecting, to wipe that out. The S. P. and S. accounting department was directed to change its accounts and cancel that interest obligation. Also at the same time the heavy obligations of the Oregon Trunk and the Oregon Electric to the S. P. and S., accumulation of operating deficits over the years, was wiped out in a similar way, effective at the end of '53 and the other was effective at the end of '52.

Q. Do you know, can you tell us—

A. (Interrupting) There is something that I just recall—

Q. Excuse me.

A. (Continuing) —we had a board meeting of the S. P. and S. to pass resolutions that were necessary for this cancellation of these items of indebtedness. Resolutions were prepared in St. Paul and sent to us and put through in the form of a way.

Q. You say you have been on the Board of Directors or Board of Trustees, rather, of the S. P. and S. Who have been members of the Board during the period when you have been a member?

A. The two parent line presidents and their two western
[fol. 2592] presidents at Seattle and myself.

Q. Two western vice presidents?

A. Two western vice presidents and myself.

Q. Have you prepared an exhibit in which you have compiled certain correspondence which illustrates the machinery followed as a matter of routine in the election of S. P. and S. directors and officers?

A. Yes, I have.

Q. Is this Exhibit 40, the exhibit which has been marked as Exhibit 40, the compilation you refer to?

A. Yes.

Q. Will you just comment briefly on this Exhibit 40 and tell us what the mechanics are of determining the members of the board and the officers of the S. P. and S.?

A. This exhibit shows the procedure followed each year in the last five years in giving the local S. P. and S. organization directions with respect to the change of officers year by year.

The first three pages of the exhibit cover the directions for the year ending or for the annual meeting to be held at the end of 1950.

Mr. Maguire: Just a moment, Mr. Hart.

If the Examiner please, I object to the witness referring to these matters as directions. They are decisions by stockholders of the corporation as to who will be elected officers but they are not directions to the S. P. and S. in the slight-
[fol. 2593] est. They are decisions by stockholders of the S. P and S. as to whom they will elect which they have a perfect right to do as stockholders.

Mr. Rockwood: Mr. Maguire, you and I are not going to argue now and I am not going to take your statement as a correct statement of the facts but you and I are not going to argue now whether these are directions by stockholders or directions by individuals who may have certain capacities.

Mr. Maguire: Or directions to the S. P. and S. either.

Mr. Rockwood: I just want the facts to appear—

Exam. Dishman: Won't the exhibit speak for itself?

Mr. Rockwood: Sure.

Mr. Maguire: I move that that comment of the witness that they are directions to the S. P. and S. be stricken.

Exam. Dishman: What do you understand these to be?

The Witness: The first letter is a letter from the Secretary of the S. P. and S. who is also its chief engineer.

Exam. Dishman: Do you consider that a direction?

The Witness: No. That is a letter to the local vice president asking for instructions as to what shall be done at the annual meeting.

The second letter is a letter from the local vice president to the two parent line presidents asking for instructions. The third letter is the reply giving those instructions.

Exam. Dishman: The term you used, "directions," that [fol. 2594] is not applicable, that term?

The Witness: I don't know what term to use. I said instructions at the moment. I think that is pretty good—

Mr. Maguire: May it be understood that the letters will speak for themselves and that we are not going to be bound any by terms given by the witness.

Exam. Dishman: Yes.

By Mr. Rockwood:

Q. Mr. Hart, who is Mr. C. F. Thomas?

A. He is the chief engineer and also secretary of the corporation.

Q. Where are his headquarters?

A. In Portland.

Q. What was the position of E. B. Stanton on December 4, 1950?

A. He was vice president and general manager in Portland.

Q. And his headquarters were in Portland?

A. That is right.

Q. Of the S. P. and S.?

A. That is right.

Q. Now, coming down through this list will you give evidence, tell us who Mr. Gavin was, Mr. Denney, Mr. Balmer, Mr. Hart?

A. Well, Mr. Gavin was at that time president of the Great Northern, Mr. Denney was president of the Northern Pacific, and I was a member of the Board of Directors of the S. P. and S.

Q. Who is Mr. Balmer?

A. Mr. Balmer was western vice president, I guess execu- [fol. 2595] tive vice president of the Great Northern at Seattle.

Q. What was Mr. MacFarlane's position at that time?

A. At that time Mr. MacFarlane was vice president of the Northern Pacific at Seattle.

Q. Now, coming down through this list of officers at the bottom of the page, who is Mr. Padden and where was his headquarters?

A. Mr. Padden was treasurer of the S. P. and S., Mr. Albertson, comptroller, Mr. Thomas, secretary.

Q. Where were their headquarters, of Mr. Padden, Mr. Albertson, and Mr. Thomas?

A. In Portland.

Q. Who were Mr. Gottschald and Mr. Paetzold?

A. They are both officers of the parent, one or other parent, line here in St. Paul.

Q. I think we have identified all the individuals named in the letter of December 5, 1950 which is Page 2 of this exhibit, and also coming over to Page 3 of Exhibit 40, there is a new name which appears on the scene, Mr. Dean H. Eastman.

At that time what was Mr. Eastman's position?

A. He was assistant vice president of the Northern Pacific stationed at Seattle.

Q. Without going through all of these more extensively than you have, does this set of the first three pages, is that generally typical of the balance of the exhibit, the individuals?

A. Yes, it is.

[fol. 2596] Q. Were some changes in personnel—for instance, on page four, Mr. J. M. Budd appears for the first time. What was the occasion for his appearance on the scene?

A. He was then vice president of the Great Northern.

Q. Excuse me, vice president, Mr. Budd, J. M. Budd?

A. So listed here.

Q. Had he not become president of the Great Northern at that time?

A. December '51 I don't think he had yet become president. I am not clear about that.

Q. He was elected vice president of the S. P. and S. but wasn't he president of the Great Northern?

A. That is right.

Q. And in that year he became vice president of the S. P. and S. for the first time?

A. That is right.

Q. Is that the general pattern that is followed for each of these years as shown in the exhibit for the later years?

A. That is correct.

Mr. Rockwood: I offer Exhibit 40 in evidence.

Mr. Maguire: No objection.

Exam. Dishman: Exhibit 40 is received in evidence.

(Defendant's Exhibit 40, Witness Hart, was received in evidence.)

By Mr. Rockwood:

Q. Mr. Hart, you say that you have been a member of [fol. 2597] the Board of the S. P. and S. since, I believe, 1933?

A. Yes.

Q. How has the Board of the S. P. and S. functioned, to your personal knowledge in that period?

A. It has never, in the 22 years it has never, functioned as what I would call a normal—

Mr. Maguire (interrupting): Just a moment, please, Mr. Hart.

The same objection, the witness is stating a conclusion. I think a factual description of the manner of functioning—

Exam. Dishman: Yes, could you state just how?

The Witness: All right, I will endeavor to do that.

A. The Board has never met to consider and decide any question in all the 22 years. It has met only to pass resolutions which were required for one reason or another as, for instance, to support an application to the Interstate Commerce Commission or to elect officers at its annual meeting following the annual stockholders meeting according to directions theretofore received. I can state positively there has been no instance in the 22 years when the Board has met and considered and decided any question.

By Mr. Rockwood:

Q. Have you participated during your years in Portland in proceedings before the Interstate Commerce Commission in which the Commission has been called upon to consider the relationship between the S. P. and S. and the Great Northern and Northern Pacific.

[fol. 2598] A. Yes, I have.

Q. Mr. Maguire is going to rise in his wrath if I ask you to comment on those decisions but will you please for the convenience of all of us give us citations to the cases in which the relationship was considered and briefly the nature of the case before the Commission?

Mr. Maguire: I am not going to rise in wrath but I am certainly going to object to Mr. Hart interpreting the decisions of the I.C.C. If he merely wishes to cite the decisions, that's all right, but you are asking him to give his opinion as to what these cases involved. The decisions will speak for themselves.

Exam. Dishman: Yes.

Mr. Rockwood: I will go on to say this is the Columbia differential case involving this subject and that is reported and so and so, I am not going to ask him—and what's more I will ask him to refrain from commenting on what is said in those decisions between the S. P. and S. and the Northern lines.

By Mr. Rockwood:

Q. Will you proceed with the shackles that have been placed upon you, Mr. Hart, and tell us what these cases were?

A. The first case was in 1910 shortly after operation commenced. I say the first case, I mean the first case in which the relationship of the S. P. and S. to the parent lines was considered. I will refrain from quoting what the Commission said. That case was 19-ICC-265, and the remark of the Commission, which I won't quote, is at 283.

[fol. 2599] The next case in which the relationship was considered was the first of the Columbia Basin differential cases, involving the effort on the part of Portland to get a differential, get a rate differential, on wheat below that required for Seattle. That was 59-ICC-321. And that decision made reference to the earlier decision to which I have just referred.

Mr. Maguire: Do you have the year of that, Mr. Hart?

The Witness: Yes, that was in 1920, and the reference was made to the 1910 decision.

A. Oh, I think in-between there was the City of Astoria v. S. P. and S., 38-ICC-16, decided in 1916, and there was a reference to that case in the later case I just referred to, the one in 59-ICC.

Then in grain and grain products, case—no, that case merely put an end to the differential. I don't think it discussed or referred to the relationship between the two parent lines, so I will omit that one.

Then in 1925 there was a West Coast Lumbermen's Association case which sought joint rates through Spokane, asked the Milwaukee as well as the other lines to make joint rates with the Spokane International and Canadian Pacific. This question was again considered. That was decided in 1927, 129-ICC-363. The reference is 364.

In 1932 the question was considered in the S. P. and S. [fol. 2600] valuation case. That is Valuation Docket 896, 41-ICC, Valuation Reports Page 1 and Page 7.

Mr. Maguire: I beg your pardon? What was that citation?

The Witness: 41-ICC, Valuation Reports, Page 1, 7.

A. (Continuing) In 1934 the question came up in the case of Pillsbury Astoria Flour Mills Company v. Great Northern, the decision is 198-ICC-642, comment at 643.

And finally in a recent case, Helix Milling Company against The Great Northern, 287-ICC-77, 78.

By Mr. Rockwood:

Q. And throughout this history did you appear as counsel for the S. P. and S. in most of these cases you have cited?

A. Yes, I did.

Q. In the Helix case did you appear?

A. No, I did not. Another member of the firm did.

Q. What was the year of the Helix case?

A. That was 1952.

Mr. Rockwood: You may cross-examine.

Cross examination.

By Mr. Maguire:

Q. You first referred to the Board of Directors, of the S. P. and S. directors, and their meetings. Now, aside from the meetings which are called under instructions from the two Northern lines for the passage of appropriate resolutions in Interstate Commerce Commission proceedings, I believe you stated that they met once a year to elect officers, is that correct?

[fol. 2601] A. That is right.

Q. Was there an annual meeting of stockholders to elect directors?

A. There was.

Q. And how were those meetings handled? Were proxies given by stockholding companies to individuals to cast the votes?

A. That is correct.

Q. And to whom were those proxies given as a rule?

A. Usually the Northern Pacific's proxy was in favor of its Seattle vice president or assistant vice president, the Great Northern similarly to its Seattle western vice president.

Q. And then they would elect the directors which followed a certain pattern by agreement between the two stockholders?

A. That is right.

Q. Then after that or concurrently with that, I presume, the directors who were elected by those holding the proxies followed the desires of the stockholders as to the election of officers or instructions, if you wish to call it instructions? Naturally they did.

A. Sometimes we did it by telephone, Mr. Maguire, but we went through the motions.

Q. Then it would be handled the same way that any closed corporation would be handled, where you just have two stockholders, while your minutes are all regular, their [fol. 2602] corners are cut in the matters of actual procedure, isn't that true?

A. I am not so sure that I know of any parallel situation.

Q. You don't know of any family corporations or small

corporations where there are only two or three stockholders?

A. Oh, yes, there are such of course.

Q. You know in those cases they handle things much more formally and by direct routes than a large corporation with a large number of stockholders, don't they?

A. Of course.

Q. In your third phase of operation or of management, which started in 1940 or thereabouts, the main difference was that the gentlemen who formerly held the title of superintendent or general manager or whoever it might be was made a vice president, is that right?

A. That was true at first, yes.

Q. But otherwise everyone reported, every department head reported, to the head of the corresponding department in St. Paul of the railroad whose president was currently president of the S. P. and S., am I correct about that or not?

A. Well, what I said, I repeat, is that that was true only for a time. I never saw any instructions that terminated the former program. But presently, particularly after the first man went out of office and another one came in, who perhaps had been told to exercise more authority, I don't know about that, but, at any rate, presently departments began to report to him.

[fol. 2603] Q. Report to whom?

A. To this local vice president.

Q. Oh, I see. And then the local vice president gives them their instructions and he is governed, however, in general by the general policies of the two stockholding companies, is that true?

A. Are you talking now about the present situation as it has now developed?

Q. Yes.

A. That is true with this explanation, that the department heads in a number of instances are in close contact with the department heads of the two parent lines and constantly things are being worked out that ultimately get to the executives in St. Paul perhaps without routing them through the local vice president, although I think in the main it is the purpose to have matters of importance presented, at least submitted, through the local vice president.

Q. I see. You or your firm, either one of you, or both of you—I don't know if I know just how to phrase that—but you or other members of your firm in Portland have represented the S. P. and S. interest in a large number of cases before the Interstate Commerce Commission, have you not, over the years?

A. Well, Mr. Rockwood has more than any other. I think he and I over the years. I haven't done so much recently. The last case, I think, was in 1952. But not many other members have participated in I.C.C. matters.

[fol. 2604] Q. Yes, but I mean the S. P. and S. interests have been represented by either Mr. Rockwood or yourself —I wasn't trying to pin it down to persons—by your firm?

A. Yes.

Q. And it has been a fact, has it not, that you and Mr. Rockwood have become familiar with the traffic policies insofar as the S. P. and S. is concerned, have you not?

A. Well, I think Mr. Rockwood more than I, because he has had closer contact with them, with the traffic people, in recent years, the past three or four years.

Q. Mr. Rockwood wants to be cross-examined on that point, I imagine, but in the latest development of the third phase of your management, where a number of the S. P. and S. department heads are in close touch with corresponding departments of the Northern lines in St. Paul, do your own department heads report or go or confer only with his opposite number, their opposite numbers, on the company, the St. Paul company, whose president is currently president of the S. P. and S. or do they divide their attentions equally between the two corresponding departments?

A. Well, I would much rather have you put that question to the S. P. and S. traffic head who will be on the stand again. I can't be sure of that. All I know is that they are in close touch with the department heads of both parent lines, both in St. Paul and in Seattle.

Q. Now, you were in speaking of the second phase, which was between the years 1932 and 1940, you used the expression that the same dual control existed that had existed in the first phase?

A. Yes.

[fol. 2605] Q. And by that you mean that the two St. Paul

lines, the two Northern lines, exercised absolutely equal control over the S. P. and S?

A. All I know is that we got our instructions from both of them.

Q. And with the exception of the occasion when the Northern Pacific decided it didn't want to go further in the matter of the extension of the Oregon Trunk from Bend to Klamath Falls, any action taken by the S. P. and S. so far as matters of general importance are concerned, at least, and so far as come under your observation have been done with the joint approval and only under the joint approval of both of the stockholder companies, isn't that correct?

Mr. Rockwood: I take exception to the frame of the question. There is no showing that there was any exception with respect to the Oregon Trunk extension of approval by the Northern lines or the Oregon Trunk or the S. P. and S.

Mr. Maguire: I think I can take care of that.

The Witness: May I answer the question?

Mr. Rockwood: No, didn't I object? Yes, I did object.

Mr. Maguire: So I am withdrawing it.

By Mr. Maguire:

Q. Let's refer to the extension of the Oregon Trunk from Bend to Klamath Falls, the proposed extension, that started out as a joint venture, did it not, that is, both of the owning companies concurring in the performance of the work, the application, and the later operation by the Oregon Trunk, did they not?

A. Well, both companies directed the Oregon Trunk to proceed with its application for authority to extend.

Q. That was upon the direction of both companies?

[fol. 2606] A. That is right.

Q. And then when one of the companies as a matter of policy decided that it didn't want to have a part of this and the Northern Pacific pulled out, then the Oregon Trunk dropped out of the picture entirely, did it not, with the exception of substituting the G. N. for the Oregon Trunk?

A. The Oregon Trunk was directed by both parent lines to join in an application to withdraw and substitute the Great Northern.

Q. In other words, in that case because one of the owners

was not willing to go through with the proposal, the proposal was not followed through by the S. P. and S. or any of its subsidiaries, was it?

A. I repeat, the Oregon Trunk was directed by the two parent lines to join in an application to withdraw and substitute the Great Northern.

Q. Is that the answer you want to give to my question?

A. That is the answer.

Q. All right.

Mr. Maguire: Mr. Rockwood, will there be accounting witnesses for the S. P. and S. called to the stand?

Mr. Rockwood: Yes.

Mr. Maguire: For the parent companies?

Mr. Rockwood: Yes.

Mr. Maguire: I don't want to unduly keep Mr. Hart on and ask him questions, Mr. Rockwood.

Mr. Rockwood: The S. P. and S. comptroller will be on to discuss some subjects and probably he will cover what [fol. 2607] you may now have in mind, or if he doesn't, we will try to get you what you should have. If it is proper, you will have it.

By Mr. Maguire:

Q. Mr. Hart, you will be in attendance for the rest of this hearing?

A. Well, I hope not.

Mr. Maguire: I think I will pass up any questions along those lines, anyhow. I will take a chance on getting it from other witnesses.

I think that is all I have.

Mr. Rockwood: I have nothing further.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: The witness is excused temporarily.

(Witness temporarily excused.)

Exam. Dishman: Off the record again.

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. Rockwood: Mr. Examiner, in the discussion off the record I think we have all concluded that the substance of the matter which is under discussion during the discussion of the production of S. P. and S. minutes has been covered by Mr. Hart in connection with other matters, and it will not be necessary to recall him, and I will not then bring the minutes up tomorrow.

Mr. Maguire: So far as that is concerned, if counsel feels, as a matter of fact, I think there is a little doubt in both of [fol. 2608] our minds as to the exact precise question that was involved, and our memories are faulty on that, but if Mr. Rockwood is satisfied with his presentation, I have no dissatisfaction about the questions I was able to elicit from Mr. Hart, so I think we will just let the whole question drop.

Exam. Dishman: Let the record show that witness Hart is excused permanently.

(Witness excused.)

Mr. Rockwood: We will proceed until 5 o'clock, Mr. Examiner?

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. Rockwood: I will call Mr. MacFarlane.

Robert S. MacFarlane was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. You have been sworn as a witness, Mr. MacFarlane?

A. Yes, I have.

Q. Will you please state your name, Mr. MacFarlane?

A. My name is Robert S. MacFarlane. I reside in St. Paul, Minnesota. I am president of the Northern Pacific Railway Company.

Q. Will you give us a brief summary, Mr. MacFarlane, of your professional and business experience?

A. Well, I am a member of the bar of the State of Washington and of the State of Minnesota. I was in general [fol. 2609] practice in Seattle for eight years, and for four years thereafter I was judge of the Superior Court for King County, which is the Seattle area, and I resigned in 1934 to enter the service of the Northern Pacific, and I have been in the railroad business ever since. In 1934 I was assistant western counsel at Seattle. In 1937 I became western counsel. In 1940 I assumed the additional duties as assistant to the president at Seattle, continuing as western counsel. In 1947 I became executive vice-president with headquarters at Seattle. And beginning in the fall, or, I think, the middle of 1949 I began spending about half of my time in St. Paul and half of my time at the western end of the railroad.

Effective January 1, 1950, my headquarters were moved to St. Paul, and although my home continued in Seattle for a short time.

On January 1, 1951, I was elected president of the Northern Pacific. I have been a member of the Board of Directors of the Northern Pacific since 1945.

Q. Do you hold any official positions with the Defendant Spokane, Portland and Seattle Railway Company and subsidiaries, the Oregon Electric and Oregon Trunk?

A. I do.

Q. What are your positions with those companies?

A. Well, I am president of all three companies, also a director, or in the case of the S. P. and S. a trustee as it is called under the laws of the State of Washington, instead [fol. 2610] of being called a director, and also a member of the executive committee of each of the companies that you referred to, that is, the Oregon Trunk, the Oregon Electric, and the S. P. and S.

Q. Now tell us what the history has been of your association with these companies.

A. Well, the S. P. and S. is a subsidiary of the Great Northern and Northern Pacific, and from the time I began working for the Northern Pacific in 1935 and always thereafter I have had some contacts with the S. P. and S. and its personnel. In 1940 I was elected a trustee of the S. P.

and S. and a director of the Oregon Trunk and the Oregon Electric. I was designated as an alternate member of the executive committee of each of those three companies, and in 1950 I was designated a member of the executive committee of each company, and my status has not changed since that time.

I first became president of the three companies in January 1951, and I have been president in all the odd numbered years since that time, and in the alternate years or the even numbered years I have been vice-president of each of the three companies.

Q. You referred a moment ago to alternate member of the executive committee. What is the significance of that term?

A. Well, the executive committee of the S. P. and S. since I have been connected with the Northern Pacific has consisted of the two presidents of the Northern lines, that is, the president of the Northern Pacific and the president of [fol. 2611] the Great Northern. In order to facilitate the handling of business, beginning in 1940, I believe it was, the principal executive officers of the Great Northern and Northern Pacific at the western end of the lines, whose offices are located at Seattle, were designated as alternate members of the executive committee, each to serve in the absence of the president of his own line. I might say that as a practical matter I cannot recall any occasion when the alternate members formally participated in any executive committee action.

Q. What official positions of the S. P. and S. are held by your counterpart, the president of the Great Northern Railway Company?

A. The president of the Great Northern is president of the S. P. and S. and its subsidiaries in the even numbered years, as I have stated, and he is vice-president in the odd numbered years. He holds exactly the same position as I do on the various boards.

Q. Do any other officers of the Northern Pacific hold any official positions with the S. P. and S. or the two subsidiaries?

A. Yes, they do.

Q. Tell us what the situation is, will you, please?

A. Well, the boards of these companies have consisted of the president of the Great Northern and the president of the Northern Pacific, the respective vice-presidents of those companies whose offices are in Seattle, and the secretaries of the Great Northern and Northern Pacific who are residents in St. Paul have customarily been appointed assistant secretaries of the S. P. and S. and its subsidiaries.

[fol. 2612] Q. Why has that been done?

A. Well, the files are largely kept in St. Paul, and each parent office has a complete set of the files as well as at Portland. All formal documents are executed here. It is necessary to have a secretary here in order to handle matters of that kind. All formal documents are executed in St. Paul.

Q. Are any other officers or officials of the parent lines formally appointed to positions of the S. P. and S.?

A. No. There are no other officers or officials that I think of now of the parent lines who have any official position with the S. P. and S.

Q. Do officials of the parent lines exercise any supervisory authority over the officials of the S. P. and S. at Portland?

A. Yes.

Q. Tell us briefly what and who does that.

A. Well, for example, the traffic officers of the Northern Pacific and Great Northern jointly supervise the traffic officers of the S. P. and S. and there are other examples that I might mention, corresponding departments in the parent lines in their relationship with the activities of that particular department or that kind of activity on the S. P. and S. Now, of course, all of the activities of the Northern Pacific and Great Northern officers are subject to the authority which rests in the presidents of each of those companies.

[fol. 2613] Q. Do either you or the president of the Great Northern receive any compensation as president and vice-president of the S. P. and S.?

A. No, we do not.

Q. Or its subsidiaries?

A. No, we do not.

Q. Do any other officers or officials of the parent lines receive any compensation from the S. P. and S.?

A. No, they do not.

Q. Would you tell us from your experience the extent to which corporate formalities are observed by the S. P. and S. and its subsidiaries?

A. Well, the Great Northern and Northern Pacific each own exactly one-half of the outstanding bonds and the common stock, and The S. P. and S. in turn owns the outstanding stock of the Oregon Electric and the Oregon Trunk. A stockholders meeting of the S. P. and S. is held each year. I think it is in December. But I can't recall an instance where any action has been taken other than to elect the Board of Trustees for the succeeding years in accordance with directions which are given by the presidents of the Great Northern and Northern Pacific.

The membership of the Board is always determined by the president of the Great Northern and the president of the Northern Pacific, and direct instructions are given as to who are to be elected, who are to be the officers.

[fol. 2614] There is an annual meeting of the trustees, there again they're directors, but no action is taken at those meetings—no action that I know of has been taken except formal actions or actions at the direction, joint direction, of the presidents of the Great Northern and Northern Pacific. Formalities and that's all.

Q. How is the executive committee of the S. P. and S. functioned?

A. Well, the executive committee, as I have already stated, consists of the president of the Great Northern and the president of the Northern Pacific, and with alternates, being the vice-presidents of those two companies, whose headquarters are at the west ends of the lines. The minutes, there have been no formal action, there has been no formal action taken by the executive committee other than once each year there is a ratification of the contracts and leases and routine items that have been executed by the president or the vice-president during that particular year.

Actually on the S. P. and S., so far as the individual members of the executive committee are concerned, I don't recall an actual meeting in any formal sense. It is a discus-

sion between the president of the Great Northern, and in my time myself as president of the Northern Pacific, and a joint determination is made and a joint direction is given to the S. P. and S.

Q. To what extent do the western executives of the Great Northern and Northern Pacific participate in the management of the affairs of the S. P. and S.?

[fol. 2615] A. The alternate members of the executive committee are Mr. Balmer, who is vice-president of the Great Northern at Seattle, as I have stated, and Mr. Eastman, who is vice-president of the Northern Pacific at Seattle. No matters are handled by those vice-presidents except upon directions or instructions from their respective presidents and in accordance with our joint determination. Occasionally we have asked them jointly to consider some subject. I don't recall an instance where either of them has acted formally as an alternate member, there has been none to my knowledge as an alternate member of the executive committee. I held that identical position when I lived in Seattle, and all that I did as an alternate member was pursuant to instructions of the owning companies as to what I was to do.

Q. In the odd numbered years when you were president of the S. P. and S. what difference is there, if any, of the extent of the authority which you exercised over the S. P. and S. and the authority which is exercised by the vice-president in that year who was at the same time president of the Great Northern?

A. None whatever, except in the title we used in signing documents. The president customarily signs the formal documents that are involved, and if the president happens to be away, why, the counterpart, who is the president of the other line acting as vice-president, signs the documents. As far as the exercise of authority is concerned, we exercise it jointly and not separately.

[fol. 2616] Q. Do the two parent line presidents personally handle all matters which are referred by the S. P. and S. officials to the executive departments in St. Paul?

A. No. Oftentimes one or the other of us are away or both of us, we travel a great deal, and the subject in our absence is handled by, on the Great Northern, Mr. Turnburke, who is vice-president of the Great Northern, and on

the Northern Pacific by Mr. Poore, who is the executive vice-president in the executive department. They discuss the subject, if it is a matter requiring immediate and prompt action, the action is taken in our names, in our joint names.

Q. You say our names?

A. The two presidents. Or if it is a matter for study and consideration, that study and consideration is given, and the report is made to the presidents, and then the presidents confer and determine what action is to be taken. I think that that pretty well covers the action of those officers. Many matters, of course, are handled, routine matters are handled over their desks, that sometimes we don't see, but it is in accordance with the practice that we follow.

Q. How are your instructions issued from the parent line presidents to the S. P. and S. officials?

A. Sometimes by letter, sometimes by telegraph, sometimes by telephone. Both the Great Northern and Northern Pacific has a transcontinental telephone line of its own, and [fol. 2617] we are in frequent and close contact with the officers of the S. P. and S.

Q. Are they given in the name of one or in the name of both, or are they given in the name of two of them or are they given by one with the concurrence of the other or just what is your practice?

A. Well, the practice now, I suppose, varies to some extent, but the vice-president of the S. P. and S. at Portland may have a matter, he may talk to us on the telephone, he may send a telegram, he may send a letter. When he sends a letter it is customarily joint, directed to both the president of the Great Northern and the president of the Northern Pacific. Then those two officers determine what the answer shall be, and the answer is customarily given by the officer who happens to be the president at that particular time, or may be given in other instances by the other president, if one president happens to be away.

Q. You have given some answers, Mr. MacFarlane, without any specific designation of the period that you are covering by the answer. In general, what periods does your description of the affairs of the S. P. and S. cover?

A. Well, generally, since my first acquaintance with that property in 1934. Of course I have become more and more closer and closer to the operation and to its activities, and for the last four and a half years I have been intimately in touch every year with what's going on in that property.

[fol. 2618] Q. At the present time, and since you have been president of the Northern Pacific what have been the responsibilities and authority of the S. P. and S. vice-president at Portland?

A. Well, there have been no written instructions. The routine matters are handled locally by the vice-president of the S. P. and S., but customarily subjects are referred to the president of the Great Northern and the president of the Northern Pacific. Mr. Hart, I think, referred to the budget. The budget is prepared locally. It is considered by the president of the Great Northern and myself very carefully, and then instructions are issued as to what items are approved and what items are disapproved or what items are to be deferred.

In industrial matters, operating matters, matters of any consequence or importance the local officer seeks the counsel and direction of the two presidents. I would say the authority of the local vice-president on the S. P. and S. is to handle routine matters efficiently and well.

Q. How frequently are you called upon to consider S. P. and S. matters?

A. Oh, very frequently, today, yesterday, sometimes—I would suppose an average of once a week and sometimes oftener, depending upon the nature of the problem. We frequently are out on the property. Mr. Budd, who is president of the Great Northern, and myself were in Portland together about two weeks ago and spent the entire day on S. P. and S. matters.

[fol. 2619] Q. You have been referring to Mr. Budd, president of the Great Northern. You mean Mr. John Budd?

A. Mr. John Budd.

Q. Not Mr. Ralph Budd, who was formerly president of the Great Northern?

A. I refer to Mr. John Budd.

Mr. Rockwood: You may cross-examine.

Cross examination.

By Mr. Maguire:

Q. When you say, Mr. MacFarlane, that local matters, while routine matters are handled locally, that industrial matters and local matters of importance are referred to the two presidents, would it be fair to say that matters involving capital expenditures, as Mr. Budd and Mr. Hart mentioned here, would come within that category of matters which are referred to the president?

A. One of them.

Q. Yes.

A. Personnel matters would be another that do not involve capital expenditures.

Q. Personnel matters, could you give me an example of that? Is it an appointment of a head to a department?

A. Yes, promotions of officers.

Q. Those go to the two presidents?

A. That's right.

Q. And are you personally familiar with the extent of the [fol. 2620] supervision, as to how far down it goes into details, that is exercised by the chief traffic officers of the Northern Pacific and Great Northern over the traffic department of the S. P. and S.? Can you say how far down in detail that supervision goes or is it supervision of general policy?

A. No, I think those officers will testify.

Q. If they are going to, I won't pursue it.

A. And they will give you direct answers on that, Mr. Maguire.

Q. I don't suppose that you would feel or rather I suppose that you would prefer that on the question of any detailed action taken with regard to any traffic of the S. P. and S. that I would ask that of the traffic officers of the Great Northern or the Northern Pacific?

A. I think they could give you direct answers as to what they themselves have done, Mr. Maguire, pursuing the policy of the companies.

Q. To sum it up, the control over the S. P. and S. is one that is exercised not by one company but it must be by the both of them acting in concert, is that true?

A. It is a joint control acting as one person.

Q. Yes, that is right. And if there should be any matter of disagreement between you as to what any positive action would be taken, what would be the effect, what would be done by the S. P. and S. in that case? Suppose you want them to build some buildings on a property, and the Great Northern president thought it was an unwise thing to do [fol. 2621] and didn't want them to do it. What would be done by the S. P. and S. in that case?

A. There has been within my knowledge or my time there has been no such situation. Mr. John Budd and myself have always been able to come to a quick and easy agreement as to what is best for the owners.

Q. Yes, but it certainly would not be a violent assumption to say that if you could not agree, if one of you wanted to have some positive action taken, some affirmative action taken, and the other one did not want it to be taken, no such action could be taken by the S. P. and S., could it?

A. I don't think the S. P. and S. would act without direction or instructions.

Q. And no direction would be issued?

A. No, because the instructions, while they might be in Mr. John Budd's name or in my name, they would be actually joint instructions.

Q. The instructions have to be joint or they are not issued?

A. Joint agreement, acting as one party.

Mr. Maguire: That is fine. Thank you very much.

Exam. Dishman: Anything more?

Mr. Rockwood: No, I have nothing more.

Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: Off the record.

[fol. 2622] (Discussion off the record.)

Exam. Dishman: On the record.

We will recess now until 9:30 tomorrow morning.

(Whereupon, at 5:00 p.m., a recess was taken until 9:30 a.m., April 6, 1955.)